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A LETTER

ON THE

SUBJECT OF THE CLERGY RESERVES,

ADDRESSED TO

THE VERY REV. PRINCIPAL MACFARLAN

AND THE

REV. DR. BURNS, D. D.,

BY

WILLIAM MORRIS, OF PERTH,

UPPER CANADA, 1838.

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LETTER.

PERTH, UPPER CANADA, 1st JULY, 1838.

TO THE VERY REV'D PRINCIPAL MACFARLAN, D. D. AND
THE REV'D ROBERT BURNS, D. D.

REVEREND SIRS,

You have long been zealous advocates of our church's claims in the British Colonies, and have been at much pains to procure a recognition of her rights in Canada. It may, therefore, aid your future exertions to be possessed of the following remarks, and especially of the documents in the appendix, which cannot always be referred to without some trouble.

Recent untoward events in our church's history in Canada, with which you are well acquainted, have assumed a national character, and as such, I doubt not, will be viewed by the leading men of Scotland. It is surely time that the provisions of the Treaty of Union should be understood; and if the conditions of that solemn compact do not confer on the natives of Scotland resident in the British Colonies equal rights with those possessed by their fellow subjects of England, the sooner this is known, the better will it be for the peace and safety of these colonies.

In the year 1791, the Imperial Act 31 Geo. III. chap. 31, was passed, dividing the Province of Quebec into the

Provinces of Upper and Lower Canada. An important provision of the statute is the reservation which it makes of one seventh part of all the unceded lands for the support and maintenance of a Protestant Clergy. At the period in question the territory embraced within the Province of Upper Canada, did not, it is supposed, contain ten thousand inhabitants, who were scattered along a frontier of more than six hundred miles, and were composed of the soldiers of several disbanded Regiments which had served in the revolted colonies, now the United States of America—of persons who adhered to the Royal cause by following the standard of their country into Canada, and who are familiarly known by the appellation of “U. E. Loyalists,” which means those who opposed the American Rebellion, and supported the unity of the Empire,—of a settlement of Scottish Highlanders in the County of Glengary, and some French Canadians in the neighbourhood of Amherstburgh, in the Western District.

In Europe, little was then known of the colony which has since engaged so much of the public attention. Emigration to the port of Quebec, for many years afterwards, was scarcely ever heard of. Immense forests of uncultivated land were unoccupied, and consequently considered of no value. The Clergy Reservation equally partook of the same unproductive and unfavourable condition. “The Upper Province,” says the Archdeacon of York, “continued almost a dense forest till after the American War of 1812. Few or no Reserves were leased, and consequently there were no funds at the disposal of the Government. The few Clergymen of the Church of England then resident in the colony, were supported as Missionaries by annual salaries derived from the British Government.”

The Ministers of the Church of Scotland, and of other denominations, also few in number, had to struggle for a livelihood in the best way they could; for whatever might have been the opinion or hopes of the settlers, who were connected with the Church of Scotland, on the subject of the Clergy Reserves, it would have been very idle to propose supporting clergymen from lands which produced "no funds," and therefore a hopeless undertaking to apply to any Presbytery in Scotland for ministers, whose only chance of maintenance would have been the precarious contributions of their countrymen, the greater part of whom were unable to do more than provide for the immediate wants of their wives and children.

Under these circumstances, it should neither create surprise, nor subject us to censure, if no public claim was made on the part of the Scots Church to participate in the possession of property which yielded no revenue. For the same individual has said that "Upper Canada even in 1818 was still in comparison a wilderness," and it was not till the 30th of April 1819, that the Clergy Corporation was constituted by patent under the Great Seal of the Province. How long after this period the proceeding was known only to its promoters, does not come within my knowledge, but from several circumstances, I am inclined to believe that the formation of this corporation was not generally understood for more than a year afterwards, when an official notification of the fact was published at Quebec. However, the members of the Church of Scotland in Lower Canada, as early as the year 1821 or 1822, forwarded a petition to His Majesty on the subject, in which their claim to a share of the Clergy Reserves, as members of one of the National Churches, was put forth.

So that, if they receive blame for not having mooted the question during thirty years after the passing of the statute 31 Geo. III., chap. 31, the Archdeacon of York has furnished very satisfactory reasons in their favour for twenty-nine years of that period; namely, that "Canada was a wilderness,"—"the lands yielded no funds"—and the formation of the Clergy Corporation was not known to the public till the month of June, 1820, when the notice in the appendix appeared in the public prints of Lower Canada; by which the colonists were made acquainted with the pretensions of the clergy of the English Church, and their determination to possess the whole of these lands, amounting to nearly four millions of acres. Up to this period, the Clergy Reserves were neither possessed nor managed by the clergy of the Church of England; the Sheriffs of the several Districts collected the rents under the authority of the Executive Government, and paid the amount to the Receiver General of the Province.

It is supposed that the patent or commission in question did not confer any other power on the corporation than that of leasing the lands, for it was intimated to the committee of the House of Commons on the civil government of Canada, in the year 1828, that a wish had been expressed by some of the English Clergy to obtain power to sell a portion of the Reserves for the support of the Bishop and Archdeacons in the first place, and then for the support of the other clergy of the Church of England and also for the education of children in the principles of the church of England (1.)* But as no copy of the commission was possessed by the Colonial Department, and therefore not laid before the committee, and as the correspondence on this subject has

* See Appendix.

never been made public, doubt and conjecture must at present supply the place of certainty and information. It is, however, very probable that by this application it was intended to set at rest all uncertainty as to the meaning of the term "a Protestant Clergy," used in the statute under consideration.

The same term, be it remembered, that is found in the Act 14 Geo. 3, chap. 83, which was passed for establishing the Government of the Province of Quebec, soon after the conquest of the colony, the 6th clause of which authorised His Majesty, his heirs or successors, to make provision "for the encouragement of the protestant religion, and for the maintenance and support of a Protestant Clergy."

This language is so plain and comprehensive, and at the same time so satisfactorily in accordance with the expressions used in the Articles and Act of Union, that any legal decision upon it, favourable to the claim of the Church of Scotland, would seem to be nothing more than a recognition of the principles of that treaty, which regards the Church of Scotland as one portion of the true Protestant Religion, and which awakened the fears of prejudice in the House of Peers, as the protest of a few noble Lords will explain (2). Those self-important individuals, like some persons of the present day, were greatly alarmed lest a law which required the Sovereign at the accession to the Throne of the United Kingdom, to take and subscribe an oath inviolably to maintain and preserve the Church of Scotland as the true Protestant religion, should have the effect of making that Church what it would seem they wished she were not; but to the honor of that enlightened and exalted branch of the Imperial Legislature, few members were found to adhere to the protest.

I would briefly observe, that if the Constitution of the United Kingdom has established the Church of Scotland as one branch of the true Protestant religion, (and this no one will attempt to deny,) and if the Statutes of the 14th and 31st years of the reign of His Majesty George the 3d, clothe the Sovereign with power to promote and maintain that religion in the Canadas, being British Colonies, it is surely an illiberal interpretation of the latter act to suppose that because the 38th and 39th clauses direct that a portion of the reservation shall be applicable to the building of Churches and to the support of Ministers of the *Church of England*—the other branch of the established Protestant religion—that therefore it is the only Church entitled to consideration under these Statutes, and this too despite the opinions of Mr. Dundas and Lord Grenville, two distinguished members of the House of Commons, when the latter act passed (3.)

I cannot believe that the term “Protestant Clergy” was used in these Statutes for the purpose of designating the Clergy of the Church of England, for if so, the same language would have prevailed throughout; and when it is found that this expression is not incidentally made use of in an obscure manner, and in an unimportant part of a sentence, but occurs exclusively in the 36th and 37th clauses of the act of 1791, and which are the very foundation of the appropriation, I feel bound to assert that the Statute protects the claims and interests of the Church of Scotland as amply (they being, to all intents and purposes, “a Protestant Clergy”) as it possibly can do those of the Clergy of the Church of England.

I have never yet understood what called forth the doubts which induced Lord Bathurst, in the year 1819, to submit the act in question to the Law Officers of the Crown,

in order to ascertain how far, under the legal construction of it, “ the dissenting Protestant Ministers resident in Canada have a legal claim to participate in the lands by that act derected to be reserved as a provision for the support and maintenance of a Protestant Clergy.” But, I think it may be confidently assumed, that it was not owing to any application from the members of the Church of Scotland here, else the opinion would have been required in a different manner from that stated in Earl Bathurst’s letter to those learned functionaries, and the first paragraph of their answer is quite conclusive on this point. For they say that although the provision is not confined solely to the Clergy of the Church of England, but may be extended also to the Clergy of the Church of Scotland, yet that it does not extend to dissenting Ministers ; evidently shewing that the *doubts* had been raised in favour of dissenting Ministers, and not on account of any application from the Church of Scotland, whose right at that time had neither been advanced nor denied in any public discussion or document that I ever heard of.

It is worthy of notice that in 1819 the Colonial Government of Upper Canada directed letters patent to issue, appointing the Bishop and Clergy of the Church of England a corporation to have the sole management of the Clergy Reserves, and that immediate application was made for power to sell as well as to grant leases of the land;—this request the Home Government never complied with : how could it ? for the statute confers no such authority on the Sovereign, even the formation of the corporation was an assumption of extra-judicial power.

About the same period His Majesty’s legal advisers were required to report whether it was incumbent on His

Majesty to retain a proportion of the lands for the dissenting Clergy. By which circumstance it is known that an opinion was entertained in some quarter that the Church of England was not entitled to enjoy the whole reservation.

If the decision which the law officers of the Crown came to on the subject, was never transmitted to the Government of the Colony, it would be wrong to accuse the individuals who composed it with unfair dealing in having concealed from the public, especially from the members of the Church of Scotland, a matter of so much importance, and in which they had so deep an interest. At the same time it is difficult to reconcile a contrary course of proceeding on the part of the Home Government with that full and fair statement which was laid before the crown lawyers. A candid and open communication to the Provincial Parliament in 1820, of the state of the case, and of the views of Government on the subject, would have removed all ground of suspicion, and have prevented much evil which has befallen the Colony in consequence of the opportunity which secrecy gave to selfish aspiring individuals to misrepresent the state of public feeling, and to misapply the funds derived from the lands ; for it is supposed that up to the year 1828 not a single clergyman had ever been supported from this source, although the gross rental of lots under lease exceeded £1200 per annum.

How it could have cost £800 a year to collect the rents is left a matter for unsatisfied curiosity to talk about. But that such is the case, abundant evidence has been adduced. [4]

In the year 1820, it became generally known that the Clergy of the Church of England were organized as a Board to superintend the management of the reserved lands, and

from the discouraging distance at which the ministers of the Church of Scotland were kept by the Provincial authorities, as well as by the style in which they were usually spoken of, it was quite obvious that their rights and claims as a co-ordinate branch of the established Protestant religion would be regarded by those in colonial power as entitled to no consideration.

These circumstances, no doubt, had a due influence on the Scottish Presbyterians of Lower Canada, when they made the first formal application to His Majesty for support for their Clergy from the provision made by the constitutional act—and to a certain extent did they operate on my mind when I laid the subject before the House of Assembly of the Upper Province in the month of December, 1823.

I have not been able to procure copies of the first two answers which Lord Bathurst gave to the applications sent to him from Lower Canada in favour of our Clergy ; but I subjoin a copy of the third letter which they received, and the late Rev'd John McLaurin, of Lochiel, when he furnished me with it in February, 1824, said it was the least favourable of the three. It is addressed to His Excellency the late Earl of Dalhousie, then Governor-in-chief of these Colonies, and bears date at Downing-street, 3d September, 1823. [5]

The result of my proposition in the Assembly was an address to His Majesty in favour of the claim of the Scottish Church. [6] A large majority of that House voted in support of the measure ; and although it was not concurred in by the Legislative Council, five members of that body being for it and six against it, I am firmly persuaded that it would have received the assent of both branches had the

fact been known to the public that the law officers of the Crown had recently given an opinion in accordance with the view taken of the law by the Assembly.

The only answer ever received to this address was a message from His Excellency Sir P. Maitland, dated the 27th January, 1825, in which it is stated that a despatch had come to hand from the Secretary of State for the Colonies, informing His Excellency that the address of the House of Assembly "has been duly laid before the King."

[7] I cannot help believing that some unfair, secret influence from this Province had the effect of preventing a reply from His Majesty to this respectful and forcible appeal in behalf of the claims of our Church.

During this year the Imperial Act, 6 Geo. 4th, chap. 75, was passed, and as it empowered His Majesty to sell to the "Canada Company" one half of the Clergy Reserves, and also to set apart and appropriate other waste lands of equal value, to be substituted and exchanged for those to be sold to the Company, the House of Assembly very naturally felt anxious to know what the Government intended to do with the proceeds of the sale ; and also to inform His Majesty that any further appropriation of Clergy lands was contrary to the feelings and wishes of the inhabitants of the country. An address for these objects was consequently passed on the 27th January, 1826, and which I append for your information. [8] This document was not suffered to lie long unanswered at the Colonial Office, for at the commencement of the ensuing session of the Legislature, His Excellency sent down a despatch from Earl Bathurst, dated Downing-street, 11th June, 1826, [9] in which His Lordship says His Majesty was persuaded the Assembly would never have passed the address if they had understood

the true intent of the Act of Parliament referred to, which had not for its object any increase of the amount of the Reserves “ specially allotted for the established Church.” This uncourteous answer produced much warmth of feeling in the Assembly, and was immediately submitted to the consideration of a committee of the whole house, when a series of resolutions were adopted expressive of the views and sentiments of a large majority of that body.

The answer was unsatisfactory to the Assembly because it supposed the members incapable of understanding the meaning of a plain and intelligible Act of Parliament ; and also because it abruptly declared that the lands set apart for the support of a Protestant Clergy were “ specially allotted for the established Church.” This term was understood by the Assembly to mean the Church of England, as no answer had been given to their address in favour of the claim of the Scottish Church ; and as at that period it was customary among a certain class when speaking of the Church of England, to designate it as “ *the Church*,” or the “ *Established Church*,” indeed, the absurd custom prevails even yet, although not to the same offensive extent that it did a dozen years ago ; perhaps some of the early exclusionists have had their eyes opened to the reality that *their* Church is not the *only* one within the pale of christianity, and this may account for the pleasing modification of their modern language respecting churches.

Little did I dream, at the period alluded to, that an opinion in support of the rights of the Church of Scotland had previously been furnished to Earl Bathurst by His Majesty’s legal advisers ; and if His Lordship, by the use of that expression, meant only one of the established

churches, it would seem that he did not feel under any particular obligation to be guided by what *they* thought on the subject. But I am disposed rather to infer, now that there is more light on the subject than shone on the public mind previous to the publication of the report of the committee of the House of Commons in 1828, that His Lordship intended by using the language “established Church” in the despatch, to include both churches—and this interpretation would better accord with his speech in the House of Lords shortly after, when he said the Reserves would seem not to have been exclusively intended for the Church of England, and that the allotment looked like a provision for the Church of Scotland also. [10]

This stage of the proceeding would naturally embrace the exertions which were made in London by the Rev'd Doctor Strachan, now Archdeacon of York, and it might perhaps be of advantage to lay before you copies of the several papers which he circulated there in order to strengthen the claim to exclusive privileges in favour of the Church of England. But as this would expose sentiments and views which have subsequently proved to be erroneous, and as the publication of those documents cannot alter the position or ground of right in favour of either Church, or in any degree advance the cause of justice, I prefer passing them in silence, choosing rather to submit such documents of an official character as will shew how far the Government of the Mother Country may be considered pledged to provide support for the Clergy of the Church of Scotland out of the clergy lands.

In the year 1825, the Rev'd Doctor Mearns, of King's College, Aberdeen, who was convener of the General As-

sembly's committee on the Canada Petition, made application to the Secretary of State for the Colonies in behalf of the Ministers of the Scot's Church in Canada, and Earl Bathurst was pleased to communicate an answer so favourable, [11] that Lord Glenelg, in May, 1837, admitted that "the expectation held out by His Lordship in 1825 to the General Assembly of the Scots Church, entitled the Ministers of that Church to the most favourable consideration in the distribution of any funds applicable to religious instruction." Notwithstanding the fair prospects which this answer presented, the parties most deeply interested in the issue were doomed to continued disappointment ; and on the 8th June, 1827, the same committee of the Church, with Doctor Lee as its convener, sent forward another petition on the subject, which, with the reply dated at the Colonial Office on the 4th July following, you will find in the appendix, No. 12.

About this period the Government of Upper Canada received orders to pay to the Clergy of the Scots Church, from the casual and territorial revenue, the sum of £750 sterling. At first the Ministers were allowed £90 sterling, but in January, 1829, His Excellency Sir John Colborne found that an equal division of the sum at his disposal for this purpose, would reduce the amount to be paid to such minister to £57, below which he stated in a letter to the late John Crooks, Esquire, of Niagara, it should never be reduced. [13]

It has been stated that this *liberal appropriation* on the part of Government should have satisfied the members of the Church of Scotland, and deterred them from pressing their claims to a share of the Clergy Reserves. But those who

make such observations, must know little indeed of the Scottish character, if they imagine that an inconsiderable allowance to a portion of the ministers only, and that paid out of a temporary fund, could induce the members of the Church of Scotland to waive their national imprescriptible, right, to enjoy in a British colony equal advantages with their fellow subjects of England! It is true that the gross sum mentioned has received some augmentation as the number of the clergy increased, but it has not much exceeded a tithe of the provision made for the support of the clergy of the English Church who are *all* provided for, whereas many of our ministers have never received a farthing from the Government. At Vandiemans Land I perceive that nearly the same humiliating disproportion of public patronage was kept up till quite lately; the Government allowance for the year 1836 being to the English clergy £5,953 14 0, and to the Scotch Church only £550 0 0. Lord Glenelg has said, "that as there did not appear to him to be any sufficient reason for this distinction, he consequently instructed the Governor to propose to the Legislative Council that the latter should receive the same amount of stipend as that to which the clergymen of the Church of England were entitled," and it is to be hoped that the same impartial proceeding will be directed for the Canadas.

The applications and complaints from this country on the subject of the Reserves, as well as on other matters, became so numerous and loud that the House of Commons, in the beginning of May, 1828, appointed a committee of twenty-four influential members to take into consideration and report on the state of the civil Government in Canada; and after an industrious investigation, which lasted nearly three months, they made a report of their opinion on vari-

ous subjects of important interest to the inhabitants of both the Canadas. The appendix to the Report comprehends the testimony of numerous witnesses, and a variety of papers, some of which the people of this colony had not previously heard of ; among these holds a prominent place the opinion of His Majesty's law officers, relative to the Clergy Reserves, dated Doctors' Commons, 15th November, 1819, for a copy of which and the names of the persons who composed the Committee, see appendix. [14] A perusal of this Report, and the questions put by the committee, together with the evidence of some of the witnesses who were connected with the colonial department, must remove all doubt as to the intention of the Government respecting the establishment of the Church of England in Canada as a dominant Church. And in order to give you ready access to this information, I have appended part of the evidence of the Right Hon. R. W. Horton, and James Stephen, Junior, Esquire, the former Under Secretary, and the latter counsel in that department.

The publication of this Report afforded very general satisfaction in both Provinces, and the Scottish part of the population in particular felt a degree of hope surpassing any former occasion, that their ardent attachment to their country's Church would ere long be rewarded by seeing her clergy set free from disability and placed in the possession of every privilege which the clergy of the sister Church are permitted to enjoy ; nor was this fondly cherished anxiety without flattering prospects for several years, for although the whole available revenue which was derived from the clergy lands, continued to be paid to the clergy of one of the establishments only, yet the tenor of several public document which came before the Provincial Legislature, in the

mean time, was such as to keep alive the confident belief that the Scottish Church would speedily obtain, at the hands of the Imperial Government, that recognition which justice points to in her favour as a branch of the true Protestant Church of Great Britain, and which the colonial authorities had long endeavoured to frustrate. I here allude to an expression used in Lord Goderich's despatch of the 8th Nov. 1832—to Sir John Colborne's message to the Provincial Parliament, of the 25th January, of the same year—to the Address to the King from the Legislative Council—and to Sir F. B. Head's instructions when he assumed the Administration of the Government. [15]

From the period when the discussions took place on this subject in the Imperial Parliament, I mean in the year 1828, up to the month of February, 1837, the public mind seemed for the most part satisfied that the utmost reliance might be placed on the intentions of His Majesty's ministers with regard to the ultimate disposal of the all-absorbing question of the Clergy Reserves.

Even those persons in the colony who had formerly held the most exclusive opinions regarding it, appeared to relax in their sentiments and to modify their language, in accordance with the principles which were professed in the several documents I refer to. This feeling of accommodation, whatever might be its origin, was beheld with the utmost satisfaction in the Legislative Council's address to the King. And the people of all classes looked upon the anxiety of that body as the harbinger of an era in the history of the colony, which would ever after be regarded as the beginning of a liberal system of Government ; and that at no future time would it be asserted that the clergy lands in Canada were

the exclusive property of the Church of England ; or, that the power and right of the Provincial Legislature to amend the constitutional act in that respect, would ever again be stigmatized as an attempt at robbery and spoliation ; more especially, as the exercise of that power had received the frequent invitation of His Majesty's Government.

At the close of the Session of 1836, it became known to the public that a certain number of Rectories had recently been established and endowed with a portion of the Clergy Reserves ; and although this unexpected proceeding was very generally condemned as unwise, and as a violation of an honourable engagement on the part of the Government, I believe very few persons imagined that His Majesty's ministers had given directions to that effect. Indeed, to have supposed this possible, should have been to accuse them of the most dishonourable breach of good faith wholly irreconcilable with the duty of high-minded ingenuous noblemen who rule the destinies of the British Empire ; and who had placed at the disposal of the Legislature of the colony the settlement of all the difficulties connected with the Clergy Reserves, by " inviting the House of Assembly to consider " how the powers given to the Provincial Legislature by the " constitutional act, to vary or repeal this part of its provisions " can be called into exercise most advantageously, for the " spiritual and temporal interests of His Majesty's faithful " subjects in this Province."

During the interval preceding the next Session of Parliament, nearly all the Presbyterian congregations in the Province held meetings to consider of a measure which they conceived would materially interfere with their civil and religious rights as a branch of the established religion of the

United Kingdoms; and consequent petitions were prepared and presented to both Houses condemning, in plain and spirited language, the establishment of the Rectories. Not only did the members of the Church of Scotland raise their voice against a proceeding which they considered illegal and unjust, but the Wesleyan Methodists, at their annual Conference soon after, sent an address to His Majesty expressive of their strong disapprobation of the measure. [16]

The consideration of one of those petitions was the occasion of that speech in the House of Assembly by the Solicitor General which created such a degree of excitement among the Scottish inhabitants, and which led to a meeting at Cobourg of delegates from the several congregations on the 14th April, 1837.

You are perfectly acquainted with the result of that meeting, and know that I proceeded to London shortly after it broke up, as the bearer of a petition to the King and to both Houses of Parliament, complaining of the policy which the Colonial Government had pursued with respect to the Rectories and other matters connected with religion; and praying that the members of the Church of Scotland might be put in possession of their constitutional rights in a British colony. My correspondence with the Colonial Secretary put you in possession of the reception which this application met with, and of the views entertained, at that time, by Her Majesty's ministers relative thereto.

The despatch of Lord Glenelg to Sir F. B. Head, of the 6th July, 1837, [17] shews beyond all controversy that the establishment of the Rectories was altogether an act of the Colonial Government, and one which caused much surprise and mortification to the Secretary of State for the Colonies.

The legality of the measure is yet to be ascertained, for it seems that an opinion of Her Majesty's legal advisers, like that described by Cowper in an adjudged case not to be found in any of the books, is of no practical value, but may be changed after the most mature deliberation ! The question yet to be determined is, first, whether the letter of Lord Bathurst [18] to Sir P. Maitland, dated Downing-street, 22d July, 1825, is in compliance with the letter and spirit of the 38th clause of the Statute 31 Geo. 3d, chap. 31, and next, whether that letter can be regarded as having legal force in the year 1836, after the death of His Majesty, in whose reign it was written, and after the recall of the Lieutenant Governor to whom it was addressed, and to whom alone it gave authority to act, and long after His Majesty's ministers had in various ways acted upon principles diametrically opposite to those expressed in the letter; and more especially, as the Governor in Council did not establish the Rectories under the authority of that despatch, but by virtue of Lord Goderich's confidential despatch of the 5th April, 1832, which Her Majesty's law officers have twice declared contains no authority for that purpose !

Whether the proceeding of which we complain be legal or not, the good faith of the Home Government, repeatedly pledged that the local Legislature should be permitted to manage the settlement of the conflicting disputes about the Clergy Reserves, has been compromised in a way that ought to produce the most painful emotion to an honorable mind.

It may yet be found that the words at the commencement of the 38th clause, require the sign manual of the Sovereign to an authority, before the Lieutenant Governor,

with the advice of the Council, can establish a single Rectory. But whether or not, is it to be countenanced that the ancient records of any colonial government are to be ransacked for documents to justify proceedings opposed to the declared policy and principles of the present Ministers of the Crown? I need not mention what effect such an admission would have on the colonists; confidence in the integrity of our rulers, under such a state of affairs, must gradually be destroyed, unless, perchance, Her Majesty's ministers take steps to vindicate Her injured councils, but of this I do not perceive any immediate prospect. Not only has no legal proceeding been instituted to try the validity of the Rectories, as we were led to hope by the despatch of the 6th July, last year; but now we are told to bring an amicable suit in the Court of Chancery, in order that either party may appeal to the Judicial Committee of the Privy Council for a final decision. This course would subject us to great expense, and engender a rancorous feeling of animosity throughout the whole country. Let the Government, therefore, bring the matter to a fair and impartial settlement, by placing before the high court of Parliament our oft-repeated claims founded on the treaty of Union—the constitutional act of Canada as explained in the debates at its passing—and the promises and hopes held out to us, from time to time, by the noblemen in charge of the colonial department.

If, after such a decision, we have at any time reason to complain of the conduct of the colonial authorities, in any matter which involves our national rights and privileges, there will be a satisfaction in knowing that the ministers of the Crown, on a former occasion, took effectual steps to bring our complaints before the proper tribunal for investi-

gation and adjustment. And whether the decision shall come up to my ideas of what is due to our countrymen in the British Colonies, or shall sustain the efforts of those who oppose us; we will, in either case, arrive at certainty as to the future. But if, unfortunately, Scotsmen shall be doomed to fill an inferior place as British subjects in these Colonies, it will be a consoling reflection to me that I never, in one instance, compromised a single "right, privilege, or advantage," which belongs to my native country as an integral part of the British Empire.

I may, before bringing this letter to a close, mention a very general opinion that prevails here, as well on the part of many influential ministers and members of our Church, as among numerous classes of other denominations; that composed as is the population of Upper Canada, it would not only be highly inexpedient but positively unjust, were the Government to clothe either or both of the national establishments with exclusive spiritual powers and advantages, or to confer in like manner the whole of the clergy lands. There are other Protestant communities, particularly the Methodists, who have done much to meliorate the religious destitution of the Colony, and at a time, too, when few other clergymen were in the country. It would, therefore, seem exceedingly selfish were we, when advocating our constitutional claims and rights, to deny to our fellow christians and neighbours that countenance and support from the Government, the deprivation of which has caused us so long and so justly to complain. More especially, as the Imperial Legislature must have contemplated the probability of such a state of society in the Province, as would render legislative relief to those sects necessary; and hence the 41st clause of the act in question

gave the Colonial Parliament, under certain restrictions, authority to "vary or repeal" any of the provisions "respecting the allotment and appropriation of the lands." Besides, the message of the 25th January, 1832, held out encouragement, which inspired hope in those communities, which it would be most ungenerous to disappoint.

I have never been able to perceive that the powers of an establishment such as our Church enjoys in Scotland, could benefit that branch of it which exists in the Canadas, even if there were no jealousies and opposition in the way. Endowment, to secure the decent and permanent support of public worship is all we ought to desire, and endowment only to a limited extent ; for the congregations must be required to contribute a portion of the ministers' stipend, whether by pew rents or otherwise, else a state of indolent indifference may arise materially detrimental to the prosperity of the Church. All we require is a moderate and limited endowment, with legal corporate powers, to enable lay members of the Church, as trustees, (not Presbyteries and Kirk Sessions) to hold and manage the property for the benefit of the Clergy; [19] and this is as necessary for other churches as for ours, and will readily be granted by the Legislature whenever it is asked.

To enforce the ecclesiastical authority or discipline of any church by legal enactments, will, I am strongly persuaded, prove an entire failure if ever it be attempted in Canada. Exclusive privileges are not adapted to the social or political condition of any part of continental America, and I think those who have formerly advocated the experiment in Canada, would manifest much wisdom by abandoning the design.

The charter of King's College was long the subject of angry debate in the Assembly of the Upper Province, and although the chief part of its objectionable character has been removed, in accordance with the public voice ; the people sustained much injury by the alienation of 225,000 acres of their school lands with which this intended institution was endowed, when its promoters were in the plenitude of their secret power. A copy of a report of a committee of the House of Assembly, which I drew up some years ago, and which I add to the appendix, along with some other documents, will let you understand the nature of this extraordinary transaction.

I fear I have trespassed too long on your time, and shall therefore conclude by expressing a hope, in the memorable words of Queen Anne, in her first speech to the British Parliament—that Her present Majesty may speedily “extinguish by all proper means, the least occasions for “jealousy, that either the civil or religious Rights of any “part of Her United Kingdom can suffer by the consequences of this Union.”

I remain,

Reverend Sirs,

Your most obedient servant,

W. MORRIS.

APPENDIX.

[1] p. p. 6. Extract from Mr. Stephen's Evidence, before the Committee of the House of Commons, on the Civil Government of Canada, in the year 1823 :

Can you give the Committee any information respecting the Church Corporation ?—The Church Corporation is created by a Commission under the public Seal of the Province of Lower Canada, and it has always been doubted whether the Governor had any strict legal right to issue such a Commission.

When was it issued ?—I believe about nine years ago.

Of whom does it consist ?—I believe it to consist of the Bishop, the Archdeacons of the two Provinces, and the Clergy of the Church of England. They are all, as I understand, members of this Corporation *virtute officii*, but I have never seen the instrument ; we have no copy of it in Downing-street, and I can therefore speak of it only from the representations of others.

Do you know what powers they have under that Commission ?—I think their powers are confined to granting leases for the term of 21 years, and to the prevention of trespasses on the Clergy Reserves. They are a corporation of management merely ; they have no power to appropriate the rent which they receive.

Is the rent received by them ?—The rent, I apprehend, is paid over to the Receiver General of the Province.

To him directly ?—I believe that the clergy collect it in their different districts, from the tenants, and pay it over to the Receiver General.

Have they any other power than that of leasing the land ?—I am not aware that they have any other powers except that of leasing, and that of preventing trespasses.

Has any wish been expressed by the Church Corporation to alter or to increase those powers ?—A wish to that effect was expressed by some of the Canadian Clergy.

What powers did they think that it would be expedient to vest in the Church Corporation ?—They wished to have powers resembling those which were granted to the Corporation in New South Wales, which powers are much more ample.

What are those powers ?—In New South Wales, in every county, a block of land is set apart, which is conveyed to a corporation, called " Trustees of the School and Clergy Reserves." The Corporation have the power of selling one-third of what is so set apart for them, and applying one half of the produce of those sales to the improvement of the rest. The Corporation are to grant leases of what remains in its improved state, and the rents which they are to receive from those leases, with the interest arising for one half of the proceeds of the sales, are to be divided into two equal shares. Of these, one is to be applied in supporting schools for the education of children in the principles of the

Established Church of England ; the remaining half is to be applied to the support of the Bishop and Archdeacon in the first place, and then for the support of the other Clergy of the Church of England. When those objects are effectually provided for, the surplus is to be applied in whatever manner the King shall be pleased to direct,

Do you know what number of leases have been made ?—I do not.

Are you of opinion that the act of 1791 contemplates the endowment of the Church of England, but that at the same time, with respect to lands which are not necessary to be applied for the endowment of the Church, the rents and profits of those lands may be applicable, at the discretion of the Crown, to the purposes of a Protestant Clergy, speaking generally ?—As I understand the Act of 1791, it distinguishes between the Clergy of the Church of England and a Protestant clergy. To the clergy of the Church of England, and to them alone, it gives the capacity of receiving endowments as parochial ministers. To “ a Protestant Clergy,” whatever those words may mean, it gives the capacity of receiving any parts of these lands which the Royal Bounty may deal out to them. The expression, “ a Protestant Clergy,” is understood by the law officers of the Crown to mean any Protestant Clergy, recognized by the law of Great Britain, or in other words the clergy, either of the Church of England, or of the Church of Scotland.

When you speak of the Royal Bounty, do you mean the rents and profits that may be made from the Clergy Reserves ?—Not the rents and profits merely. I apprehend that the King might, if it should so please him, appropriate in perpetuity a certain portion of land for the sustentation of one or more English clergymen, or of one or more Presbyterian clergymen of the Church of Scotland.

Do you mean beyond the one-seventh reserved, or out of that one-seventh ?—Out of the one-seventh.

How do you reconcile that answer with the statement that the Act appears to you to contemplate an endowment only of the Church of England ?—Because I apprehend that it is one thing to erect a parsonage and endow it with a glebe, and a different thing to appropriate a piece of land for the maintenance of a clergyman.

Have the law officers of the Crown given their opinion distinctly, that by the term Protestant Clergy no other sect is included, except the Presbyterian clergy of the Church of Scotland ?—They have, as I understand them, given their opinion distinctly, that no body of clergy, not recognized by the law of this land, can be candidates for this property.

And that consequently no such body is contemplated under the term Protestant Clergy, under the Act of 1791 ?—Yes.

Can you point out in the Act the words upon which you take the distinction you have stated to the Committee ?—The 37th clause enacts, “ That all and every the rents, profits or emoluments which may at any time arise from such lands so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a Protestant Clergy within the Province, in which the same shall be situated ” The 38th clause enables the King to authorize the Governor, with the advice of the Executive Council, to erect within every township or parish, one or more parsonage or rectory, according to the establishment of the Church of England. The 39th clause enables the King to authorise the Governor to present to every such parsonage an incumbent, or minister of the Church of England, who shall have been duly ordained according to the rites of the said Church. The 40th clause declares that every presentation of an incumbent to any such rectory, and the enjoyment of the rectory and the profits of it by the incumbent, shall be liable to all the rights of institution and other spiritual jurisdiction which may have been granted by the King to the

Bishop of Nova Scotia, or which may be granted to any other person according to the laws and canons of the Church of England. And the 41st clause enacts, That the several provisions hereinbefore contained respecting the allotment and appropriation of lands for the support of "a Protestant Clergy" within the said Provinces, and also respecting the constituting, erecting and endowing parsonages or rectories within the said Provinces, and also respecting the presentation of incumbents or ministers to the same, and also respecting the manner in which such incumbents or ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express provisions for that purpose contained in any Act or Acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively, and assented to by His Majesty, his heirs and successors, under the restrictions which are afterwards mentioned. Those restrictions are the laying them before Parliament. The 42d section enacts, that whenever any Act is passed by the Legislative Council and Assembly of either of the Provinces, to vary or repeal any of those provisions respecting the allotment and appropriation of lands for the support of a Protestant clergy within the said Provinces, or respecting the constituting, erecting or endowing parsonages, or respecting the presentation of incumbents or ministers to the same, or respecting the manner in which such incumbents shall hold them, and that whenever any Act shall be so passed containing any provisions affecting the exercise of any religious form or mode of worship, or shall impose or create any penalties, burthens, disabilities, or disqualifications in respect of the same, or shall in any manner relate to or affect the payment, recovery, or enjoyment of any of the accustomed dues or rights hereinbefore mentioned, or shall in any manner relate to the granting, imposing or recovering any other dues, or stipends, or emoluments whatever, to be paid to or for the use of any minister, priest, ecclesiastic, or teacher, according to any religious form or mode of worship in respect of his said office or function, every such act must, before it receives the King's assent, be laid before the Parliament of Great Britain. Now as it seems to me in all these passages the Church of England is expressly mentioned where the Church of England is meant. And where the more comprehensive sense is to be conveyed, the more comprehensive term, "a Protestant clergy," is employed.

What meaning do you attach to the latter part of that paragraph, especially to the words "any other dues?"—I explain the words thus: this Act of Parliament, in the earlier sections, refers to the dues and rights belonging to the Roman Catholic clergy. In this passage its language is, "If the Legislature of the Canadas shall grant or impose any other dues,"—other, that is, than those which belong to the Catholic Clergy—"then the King shall not have the power of assenting to such an Act until Parliament has had the opportunity of seeing and considering it."

Do you consider that clause as in any way a guarantee against the possible invasion by the Assembly of what had been granted to the Catholic Clergy?—I apprehend that the object of the clause is rather to take some security that the Legislature of the Canadas should not establish any objectionable form of worship, or impose on the King's subjects there any dues for its support. Before the King can assent to any such law, Parliament claims an opportunity of seeing it. This is, in fact, a jealousy of the King legislating, with the consent of the Provincial Assembly, on the subject of religion.

In clause 37, it is enacted, "That all and every the rents, profits or emoluments which may at any time arise from such lands so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a Protestant Clergy within the Province in which the same shall be situated, and to no other use or purpose whatever." As the next clause limits the en-

dowment to the Church of England, is it your opinion that the rents, profits, and emoluments arising from lands not endowed must be, at the discretion of the Crown, applicable for the general purposes of a Protestant Clergy?—Applicable for any Protestant Clergy established by the law of this land.

Will you point out to the Committee any provision in this Act which appears to permit the appropriation and allotment of land specifically to a Protestant Clergy, as contrasted with the appropriation of a portion of the rents and profits arising from the lands?—I apprehend that the 37th clause, which authorizes the application of “rents, profits and emoluments,” to the maintenance of a Protestant Clergy, carries with it a power to the King to appropriate, in perpetuity for that purpose, any portion of the land whence those “rents, profits and emoluments” are to arise. The land so to be appropriated may, in my apprehension, be given either to the English or to the Scotch Clergy. That the land itself is to be held in mortmain, and is to be inalienable, I suppose to be a matter of course.

Do you conceive, according to your interpretation of the term Protestant clergy, that other Presbyterians than those in communion with the Church of Scotland would come within the letter of the Act?—I think not. I apprehend that no man is a Clergyman of the Kirk of Scotland who is not appointed to that office either by the General Assembly, or by some of the Presbyteries dependent upon it. A person calling himself a Presbyterian, who is altogether unallied with the Church of Scotland, does not, as I conceive, come within the meaning of the term “a Protestant Clergy,” as that expression must be understood when used by the United Parliament of England and Scotland.

Do you then consider the Presbyterians of the Synod of Ulster as not recognized by law as a Protestant Clergy in the country?—I apprehend that the Presbyterians of the Synod of Ulster are not recognized by law as an established Church in this country. The Acts of Union prevent the legal establishment of the Church of Scotland in any part of the United Kingdom except in Scotland.

Extract from Report of Select Committee of the House of Commons, on the Civil Government of Canada, 1823 :

To a property at once so large and so unproductive, it appears that there are numerous claimants.

The Act of 1791 directs that the profits arising from this source shall be applied to a Protestant Clergy; doubts have arisen whether the Act requires the Government to confine them to the use of the Church of England only, or to allow the Church of Scotland to participate in them. The Law Officers of the Crown have given an opinion in favour of the Rights of the Church of Scotland to such participation, in which your Committee entirely concur; but the question has also been raised, whether the Clergy of every denomination of Christians, except Roman Catholics, may not be included; it is not for your Committee to express an opinion on the accuracy which the words of the Act legally convey. They entertain no doubt, however, that the intention of those persons who brought forward the measure in Parliament was to endow with Parsonage Houses and Glebe Lands, the Clergy of the Church of England, at the discretion of the local Government; but with respect to the distribution of the proceeds of the reserved lands generally, they are of opinion that they sought to reserve to the Government the right to apply the money, if they so thought fit, to any Protestant Clergy.

The Committee see little reason to hope that the annual income to be derived from this source is likely, within any time to which they can look forward, to amount to a sufficient sum to provide for the Protestant Clergy of these Pro-

vinces ; but they venture to press the early consideration of this subject on His Majesty's Government, with a view to an adjustment that they may be satisfactory to the Province ; of the principle on which the proceeds from these lands are hereafter to be applied, and in deciding on the just and prudent application of these funds, the Government will necessarily be influenced by the state of the population, as to religious opinions, at the period when the decision is to be taken. At present it is certain that the adherents of the Church of England constitute but a small minority in the Province of Upper Canada.—On the part of the Scotch Church, claims have been strongly urged on account of its establishment in the Empire, and from the numbers of its adherents in the Province. With regard to the other religious sects, the Committee have found much difficulty in ascertaining the exact numerical proportions which they bear one to the other ; but the evidence has led them to believe, that neither the adherents of the Church of England nor those of the Church of Scotland form the most numerous religious body within the Province of Upper Canada.

[2] p. p. 7. Extract from the Journals of the House of Lords, 4th March, 1706:

“ An Act for an Union of the Two Kingdoms of England and Scotland.”

Then a Rider was offered to be added to the Bill, which was read as follows :—

“ Provided always, that nothing in this Ratification contained, shall be construed to extend to an approbation or acknowledgment of the Truth of the Presbyterian Way of Worship, or allowing the Religion of the Church of Scotland to be, what it is styled, the true Protestant Religion.”

And it being proposed “ that the same be read a second time,” and debated thereupon—the question was put, “ whether this Rider shall be read a second time.”

It was resolved in the negative.

Protest against rejecting it.	}	<i>Dissentient</i> —BEAUFORT, BUCKINGHAM, NORTH & GREY, ANGLESEY, NORTRAMPTON, ABINGDON, NOTTINGHAM, WINCHELSEA, SEARSDALE, GEO. BATH & WELLS, THANET, GERNESEY, GRANVILLE, STOWELL, WEIGH- MOUTH, GUILFORD, LEIGH.
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When this vote was taken there were 70 members present, of whom 15 were Lords Spiritual.

[3] p. p. 8. Evidence of Lord Viscount Sandon, before the Select Committee of the House of Commons, on the Civil Government of Canada, in 1828, communicating the opinion of Lord Grenville, on the subject of the Clergy Reserves :

Do you recollect having a conversation with Archdeacon Strachan upon the subject of the Church Reserves in Canada ?—I remember two or three conversations which passed, principally, I believe, in the committee-room of the Emigration Committee ; I do not remember distinctly any one.

The Committee observes, in a speech made by Archdeacon Strachan, on the 6th of March, 1828, in the Legislative Council of Upper Canada, that Archdeacon Strachan says that he called upon your Lordship, in consequence of the debate which took place in the month of May last year in the House of Commons, with a view of ascertaining from you exactly what you had asserted to have been Lord Grenville's statement upon that subject; and Archdeacon Strachan proceeds to say, that he called upon your Lordship, and that you stated that Lord Grenville had stated that the Scotch Presbyterians were not intentionally excluded; and provided that provision should be found more than sufficient for the established Church, he saw no objection to giving them aid.—Is that a correct representation of what you said to Dr. Strachan?—That certainly is not a correct representation of what passed between us. It is difficult at this time to recollect distinctly what I said to him. All I can say is, that I could not have said what he represents me to have said; for it is not now, nor ever was, my understanding of what Lord Grenville said to me.

Have you at this moment a distinct recollection of what Lord Grenville said to you?—I remember that he stated to me that the scheme upon which he built the system that was intended to be incorporated in the Canada Act of 1791, was a good deal derived from information they had collected from an officer that had been much in Pennsylvania, of the system with regard to lands appropriated to religion and education in that State; I understood him to say, that the distinction of a Protestant clergy, which is frequently repeated in the Act of 1791, was meant to provide for any Clergy that was not Roman Catholic, at the same time leaving it to the Governor and the Executive Council of the Province to provide in future how that should be distributed.

Extracts from Debates in the House of Lords. 26th June, 1828, containing opinion of Lord Grenville, on the subject of the Clergy Reserves, as conveyed by the Earl of Harrowby :

The Earl of Haddington said, he held in his hand a petition from a very numerous body of individuals residing in Lower Canada, relative to a subject which appeared to them of a nature of considerable importance, and which he doubted not would appear important to their lordships also, as closely connected with the interests and happiness of Upper and Lower Canada. The petition emanated from persons professing to belong to the Presbyterian Church of Lower Canada, and it related to the reserved lands appropriated for the support of the Clergy, and which the petitioners contended were intended for the support and maintenance of all Protestant clergymen; and consequently those of the Presbyterian Church. He (the Earl of Haddington) expected soon to have another petition to present upon the same subject; but as the present one, which was signed by about 4,000 persons, appeared to him to speak the wishes and offer the prayers of all classes of our fellow-subjects in that colony, in which light it would doubtless be viewed by their lordships also, he thought it necessary to defer his observations until then. The petitioners stated, that they had paid their own clergy as much as they possibly could, but it was totally out of their power to maintain them without the assistance of the "Clergy Reserves," to which they thought themselves entitled by the act 31 of George III. which act assigned certain portions of ground land for the support of the Clergy of the Protestant religion, as established in Canada. The provision of the Act did not specify the Church of England, but merely the Protestant religion, and the only question to be determined was whether or not those who belonged to the Presbyterian Church were of the free Protestant religion; the petitioners contended they were, and he could see no reason for drawing a different conclusion.

The concession, if granted by government, he thought would be the means of introducing much religious peace and contentment in that colony. For what was the consequence of the present system? The various religious denominations who were deprived of the provisions of the act alluded to, not being able to support their own clergy, were obliged to attend the ministry of other preachers, many of them missionaries from the United States of America, who, if they could teach them morality and religion, (and far was he from judging otherwise) yet they were by no means calculated to teach them the duty they owed to their king, or love and attachment to their country. Besides, if a support were given to the clergy of the established Church, which was denied to any other, a dangerous consequence might be the result of comparisons which would very naturally be made between the condition of their clergy and those of the United States—and he believed that no measure was less grounded upon true policy than that of a government making laws exclusively for the benefit of one church, the members of that church constituting the minority of the inhabitants of the country for which such laws were enacted. A noble lord, in speaking upon this subject, introduced the authority of Lord Grenville, to show that the words "Protestant religion" set forth in the act before alluded to, were made use of solely with a view to exclude Roman Catholics from its provisions. He had satisfaction, however, in the assurance that the question respecting Canada, would be enquired into and fully discussed by the committee appointed to take the subject into consideration, in another place, and he hoped that the report of that committee would tend to set the question at rest, and ultimately lead to a satisfactory adjustment. He would, therefore, for the present, only move that the petition be laid on the table.

The Earl of Harrowby would not have said a word upon the subject of the petition presented by the noble lord, had not a reference been made to the opinion of Lord Grenville; but as such reference had been made, he felt himself called upon to state, that he had repeated conversations with that noble lord (Grenville) upon the subject, and he (Lord Grenville) had not only expressed his opinion so, but had requested him (the Earl of Harrowby) if any opportunity should offer, to state that both his own and Mr. Pitt's decision was, that the provisions of the act 31st George III. were not intended for the exclusive support of the Church of England, but for the maintenance of the clergy generally of the Protestant Church.

The Marquis of Lansdowne said he did not feel anxious to prolong an incidental discussion upon a subject of such great importance, the more particularly as a committee of the other house were at that very time engaged in submitting the subject to the most accurate investigation, but he could not refrain from declaring that he never could understand that wherever any act of Parliament named the Protestant clergy, it named the Protestant Episcopal Clergy. It should be remembered that that was the Legislature of England and Scotland, a perfect parity existing between the two. Scotland was not to be considered as a dependency from England, but as united with her upon the principle of Mr. Pitt—upon the principle of the union between England and Ireland—upon the principle of perfect union and perfect equality. It was not, therefore, to be understood, that the Church of Scotland was confined to Scotland; and many years had not elapsed since colonies were as much connected by legislation with Scotland and the Kirk of Scotland, as they were with England and the Church of England. It was determined that the Church of Scotland ought to be provided for in the East Indies, as well as the Church of England, and, in consequence, a corresponding establishment was given in that colony. He contended that the presumption was, that the act alluded to implied the Protestant clergy at large, for he thought that reports were not for a moment to be put in compe-

tion with the solemn declaration of the noble lord who had introduced that measure. Upon all these grounds, their lordships should avoid coming to a hasty decision upon the question; they should pause and consider the constitution of the act, and not suffer themselves to be carried away by individual authority, however respectable.

Earl Bathurst agreed with the noble Marquis in thinking their lordships should pause before they came to a decision upon a question of such importance—a decision to which they were not called upon to come at present. But when the time did come, he was sure they would consider it with all that intensity of attention which it demanded, without reference to the recorded opinion of Mr. Fox or Mr. Pitt, or any other individual, however exemplary or distinguished. It was a question of too great importance to be judged by such a criterion, or after such a manner. *He agreed with the noble Marquis that the Protestant establishment was not exclusively contemplated by that act. He acknowledged in some degree the claim of the Church of Scotland, according to the provisions of the 31st of George III.*—But in the Act there was a clause which shewed clearly in his mind that the allotments made to the clergy were as a commutation of tithes, and in lieu of tithes. *Notwithstanding all this, he, at the same time, admitted that the allotment of one seventh looked like an intention to make some provision for the Church of Scotland also.* He believed there was a power to change from time to time, and that a large allotment had accordingly been made to allow scope for this; but the great principle undoubtedly was, that the first care should be taken of the Church of England, and that its demands should be satisfied first. The moment a parish was established, the provincial authorities were bound to appoint a Rector, and to endow a church. But still, if there was any surplus, he did not mean to say that that should not be applied to meet the wants of the Church of Scotland. The subject afforded grave matter of enquiry, and he begged to be considered as expressing no fixed opinion upon it. At the same time he would say, that when he was colonial secretary he had given the subject much of his attention and consideration, and his own impression, and that of the members of the crown office, with whom he had frequently communicated, was, that the claims of the Church of England were paramount, and should be first satisfied, but that any surplus might be devoted to the use of the Presbyterian Clergy.

The Earl of Haddington, in moving that the petition be laid upon the table, denied that it would be a spoliation to give the Presbyterian clergy a provision from the clergy reserves. He defended them against the charge made by the Right Rev. Prelate, at which he was much surprised. There was nothing extraordinary or deserving of reprehension in the Dissenters having laid aside the differences which divided them in their own country, and which were in a great degree local. Besides the petitioners prayed for any relief, maintenance or support which Parliament would be pleased to afford them.

Lord Goderich thought the Act of Parliament contemplated a provision for the maintenance of another Protestant clergy besides the clergy of the Church of England. There was a clause in it which authorised an alteration in the allotments, by the Provincial Legislature. There was another clause which applied one-seventh of all grants to the maintenance of a Protestant Clergy.—And amongst them there was another clause, which evidently contemplated the possibility of another clergy being provided for, from the terms in which it was conceived, for it imposed on all persons the necessity of contributing for the dues or stipends of any minister or religious instructor in respect of his office or

function. It was provided that the act by which the alteration was made should be transmitted to this country, and receive the sanction of Parliament. It was quite evident, too, that from the state of the colony, when that act was passed, (there not being, he believed, at that time 10,000 inhabitants in Upper Canada) that though there might be a just and natural anxiety to establish a Protestant Church, yet that it would have been impossible to look forward to the establishment of any particular Church.

The petition was then laid on the table.

[4.] p. p. 10. Extract from Observations by John Strachan, D. D., Archdeacon of York, 1827.

1st. Till 1819, the Clergy Reserves were under the management of the Executive Council; the members of which, having no particular interest in leasing them, took no pains in the matter.

2d. In 1819, the leasing, and the leasing only, was committed to the Clergy of the Established Church; for the rents being paid over to the Receiver-General, to be disposed of by the Government, according to the 31st of George III.

3d. The exertions of the Clergy in promoting leases were seconded by a change of times and circumstances, the most convenient lands are nearly all granted.

4th. The lands, which remain at the disposal of Government, are now so remote, that a lease near the market is becoming more desirable than a free grant.

5th. Emigration is another cause for the demand for leases; for Emigrants have not the same dislike to leases as the natives, and are anxious to remain in the thick settlements; but as there are no grantable lands in such, they are beginning to take leases.

6th. Parents are commonly desirous of settling their children near them; and since to purchase is not always in their power, they are finding it more convenient to apply for leases.

In regard to the actual receipts of rents, it is to be remarked, that for a long time the rent was taken to pay the expence of the leases and the bonds necessary to convey the title to the applicant; and the receipt, amounting annually to about £1,200, is farther reduced by the mileage and per centage of the Sheriffs, who are employed to collect this small sum from farms, scattered over a surface of nearly 40,000 square miles.

Since 1819, improvements have been in progress, so as to increase the receipts; each applicant on receiving his lease pays for the same; and greater regularity is observed in demanding and collecting the rents.

But although leases will now certainly issue much faster than they have done, yet the smallness of the amount, even if strictly collected, prevents us from hoping that the Establishment, under the present system of management, can possibly keep pace with the wants of the people, as will appear from the fact, that there are in the Province about 150 townships, containing from 40 to 500 families, in each of which a Clergyman might be usefully employed, and double this number will be required before the expiration of 21 years, which at the very moderate annual stipend of £200 each, would require immediately £30,000 additional per annum; and in the course of 21 years £30,000 more, or in all £60,000. But let us suppose only fifty Clergymen immediately necessary, and 200 at the end of 21 years, this would require an immediate

revenue of £10,000 per annum, and towards the end of the period £40,000 more.

Now the leases which have issued produce a gross revenue of about £1,200; and suppose that during the next 21 years, five times as many are issued, and that the rents are rigidly exacted and collected, the revenue would hardly amount to £2,000, or very little more than half the sum which is now required to support such a number of Clergymen as are necessary to supply the present wants of the Province.

These things pressing forcibly on the minds of the Lord Bishop of Quebec and his Clergy, and on the Lieutenant Governor of Upper Canada and his Council, induced them to seek the power of selling the Clergy Reserves to a limited extent, as well as leasing them, leaving the proceeds to be disposed of, as provided for in the 31st Geo. III. chap. 31; and this is the object of the bill now before Parliament.

From this measure many important advantages would result:—

1st. One-seventh of the country now locked up in mortmain, which in some degree impedes improvement, would be made free.

2d. The means would soon be afforded to multiply Clergymen to any number that might be required.

3d. A new link of attachment would be formed with the mother country.

4th. The lessees would be more punctual in paying their rents, for fear of losing any claim to renewal or advantageous purchase.

5th. Two or three hundred Clergymen, living in Upper Canada, in the midst of their congregations, and receiving the greater portion of their income from funds deposited in this country, must attach still more intimately the population of the Colony with the parent state: their influence would gradually spread; they would infuse into the inhabitants a tone and feeling entirely English, and acquiring by degrees the direction of education, which the Clergy of England have always possessed, the very first feelings, sentiments and opinions of the youth, must become British.

It is quite evident, that in a very short time, from the new method of granting lands, and their distance, sales of Clergy Reserves will be more frequent than leases are now; nor will this be disputed by any, who consider the manners and habits of the people of the Canadas. They dislike all tenures except the fee-simple: it is, therefore, not extravagant to expect to sell 4,000 lots in the next 21 years, averaging 15s. per acre; for though some might at first sell for 10s., yet many would fetch 20s.; and all, except bad lots, would gradually rise in price as the country was improved and became full of people. Now, 4,000 lots, averaging 15s. per acre, give £600,000, which, at 5 per cent., would yield a revenue of £30,000, which, added to the annual rents, accruing from leases, would amount to £38,000, a revenue sufficient to support nearly 200 Clergymen.

Extract from the Evidence of the Right Honorable R. W. Horton, M. P., before the Select Committee of the House of Commons, July, 1828.

It appears that out of the Crown lands granted to the Canada Company, a reservation of £750 a year has been awarded for the Scotch Church, with what view was that award made?—It was considered highly expedient that the Scotch Church should have a provision, and whatever might be the adjudication with respect to the Clergy Reserves, it was quite evident, that even if the principle of dividing the profits of those Reserves between the two Churches had been adopted, it would have yielded only £200 per annum to the Scotch Church, which would be insufficient to meet the demands for their pastors, and consequently the Secretary of State recommended the appropriation

of a part of the proceeds of the payments of the Canada Company to the payment of the Scotch clergy.

How long is that £750 to be continued to the Presbyterian Church?—The £750 is necessarily at pleasure; but it is to continue as long as the payments are made from the Canada Company, which involved a period of fifteen years absolutely, and a probability of a much longer period.

Extract from Dr. Strachan's Speech, in the Legislative Council of Upper Canada, 26th March, 1828.

"It was late before the business came on, and the Hon. R. W. Horton had some difficulty to get the House to attend—at length he got the Bill into Committee. He stated that great misapprehension had gone abroad respecting the object of the Bill, yet all that was now asked for had been already granted. Power had been given by law to sell in another way one-half of the Clergy Reserves to the Canada Land Company, but after some consideration another arrangement with that Corporation had been preferred. He stated that the Reserves at present netted scarcely £400 per annum. By rendering them inalienable they produced little or nothing; leasing was not popular, nor would it ever be, so long as lands could be so easily procured in fee simple."

Extract from the Evidence of the Rev. C. Morgell, Chaplain to the Lord Bishop of Quebec, before the Committee of the House of Commons, 14th June, 1828.

Will you be good enough to explain what you meant when you said that in Lower Canada the Clergy Corporation were actually in debt since the year 1819?—I know that the Corporation were indebted to their Secretary a few pounds for keeping the books, and after defraying the expenses connected with the management of the Reserves.

In what way are the expenses of the Clergy Corporation incurred?—By collecting rents, which is an enormous expense compared with the receipts.

Is there any payment to the Clergy Corporation themselves, or to the Secretary?—A salary is given to the Secretary, and a certain sum is allowed each member of the Corporation for his expenses in coming from a distance to attend the annual meeting; nothing is allowed to those resident where it is held; but there is not a single clergyman supported by the Reserves, or that nets a sixpence from the Reserves.

Are the Committee to understand that the expenses of the collection have in Lower Canada amounted to above 100 per cent. upon the rental of the Clergy Reserves?—I know that the Clergy Corporation of Lower Canada were in the debt of their Secretary a few pounds, after the balance was struck, while I was at Quebec.

Do you know that not one farthing collected by the Corporation has ever been available for the support of any clergyman?—I do.

Applying these observations to Upper Canada, do you happen to know what has been the annual amount that has been derived for the purposes of the Clergy from any leased lands of the Clergy Reserves in that Province?—I do not know the sum expended in the erection of parsonages; but in the way of income, none of the clergy of Upper Canada have been in any degree benefitted by them, nor can they be; they contend for them as a provision for future clergymen, when new missions are opened; as far as they are individually concerned they are wholly disinterested. Perhaps it might be as well to say that the time when the corporation in Lower Canada were in debt to the Secretary, was before the new arrangement had been made, by which they have rendered

the collecting of the rents easier and cheaper than formerly ; whether they are now in debt I do not know.

See additional Appendix, No. 1, Speech of Mr. Horton, Feb., 1827.

[5] p. p. 11. Letter from Earl Bathurst, to His Excellency the late Earl of Dalhousie, Governor General, dated Downing-street, 3d September, 1823:

(Copy)

DOWNING-STREET, 3d September, 1823.

My Lord—

I have received Your Lordship's letter of the 22d February, in which you enclose me copies of two letters which you have received from the Ministers of the Scotch Churches at Quebec and Lochiel, with a view to an additional provision being made for the support of the Clergy of that Church.

I am fully prepared to admit the justice and propriety of many of the remarks in the letter of the Minister of Lochiel, to which you have invited my particular attention ; but, at the same time, I am not aware that there are any funds from which such a provision could be made, and if any such did exist.—The Clergy of the Church of England would have at least an equal claim on them, nor do I think that it would be expedient or just to allow any proposition to be made to the Assembly for a legislative provision for the Scotch Clergy, unless at the same time a proposition was also made for providing funds for the support of the English Protestant Clergy within the Province, who are placed in the most anomalous situation, and part of whose income is now derived from the Military Chest, and the charge included in the army extraordinaries.

Those reserves of land which were destined for their support, being at present unproductive of any revenue which could be applied for their use.

Could such propositions be both brought forward in a proper manner and with reference to the relative importance of the two establishments, I should be happy to recommend to His Majesty to give his sanction to any Bills that might be framed to give effect to the principle—but I am afraid that, in the present state of feeling in the Legislature of Lower Canada, there is little chance of such measures being brought forward, and I much fear that there would be little disposition in the House of Commons to sanction any increase of that necessary charge which must be sustained at home for the support of the English Protestant Church in Lower Canada, for whom no effective provision is made within the Colony, however desirable it might be to afford the Ministers of the Scotch Church that assistance which their exemplary conduct so much deserves.

I have the honor, &c. &c. &c.

(Signed)

BATHURST.

To His Excellency,

The Earl of Dalhousie,

&c. &c. &c.

[6.] p. p. 11. Address of the House of Assembly of Upper Canada, in favor of the Church of Scotland, 5th Jan. 1824.

TO THE KING'S MOST EXCELLENT MAJESTY.

Most Gracious Sovereign :

We, your Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, most humbly beg leave to approach your Majesty, and to submit to your Majesty's most gracious consideration our earnest supplications in behalf of the clergy and members of the Established Church of Scotland, in this portion of your dominions. When the kingdoms of England and Scotland were (happily for both) united under the British Crown, the subjects of each were placed on a footing of reciprocity, they were to enjoy a full communication of every right, privilege and advantage, and their respective churches were established as "true Protestant Churches," within their particular limits ; the clergy of both might therefore reasonably expect equally to participate in the benefits which might result from the union. Viewing the conquest of these Provinces from the dominion of France, by the united exertions of Great Britain and Ireland as one great advantage resulting from the union, we humbly conceive that the Churches of England and Scotland had, after such conquest, equal rights as to the exercise and enjoyment of their respective religious privileges therein, and an equal claim to enjoy any advantages or support which might be derived from the newly acquired territory. By an Act passed in the thirty-first year of the reign of our late revered Sovereign, whose memory will long live in our hearts, an appropriation is authorized to be made of one-seventh of the lands of the Province for the support and maintenance of a Protestant Clergy in this Province ; and under the general words, "a Protestant Clergy," used in that Act, your Majesty's subjects in this Province, who belong and are particularly attached to the Church of Scotland, fondly hoped that a provision had been made for the Clergy of that Church, as well as for those of the Church of England, and though the allotment of lands thus authorized has hitherto been in a great measure unproductive, they felt a degree of confidence that it would eventually afford a fair support to the clergy of both Churches. The lands reserved under the said Act being claimed and enjoyed exclusively for the support and maintenance of the Clergy of the Church of England in this Province, we humbly entreat your Majesty's consideration of the subject, and if in the legal construction of the said Act it is considered that no provision for the Clergy of the Church of Scotland was contemplated thereby, we would most respectfully and earnestly express to your Majesty our hope that your Majesty will be graciously pleased to extend to them your royal protection and consideration, by directing such provision to be made for their maintenance and support as to your Majesty may appear proper. That your Majesty may long reign in the confidence and affection of all your subjects, to guard and secure their rights in every portion of your widely extended dominions, is the prayer of your Majesty's faithful subjects the Commons of Upper Canada.

(Signed)

LEVIUS P. SHERWOOD,

Speaker.

Commons House of Assembly, }
5th January, 1824. }

[7.] p. p. 12. Message from His Excellency Sir P. Maitland, to the Assembly of Upper Canada, 27th January, 1825.

P. MAITLAND.

The Lieutenant Governor acquaints the House of Assembly that he has received a despatch from His Majesty's Secretary of State for the Colonies informing him that the Address of the House of Assembly relative to the claims advanced by the Presbyterians of the Kirk of Scotland settled in this Province, to participate in the lands reserved for the support of a Protestant Clergy, under the Act of 31st George III. has been duly laid before the King.

[8] p. p. 12. Address by the Assembly of Upper Canada, to the King, 27th January, 1826 :

TO THE KING'S MOST EXCELLENT MAJESTY.

May it please Your Majesty—

We, Your Majesty's most dutiful and loyal subjects, the Commons of Upper Canada, in Provincial Parliament assembled, most humbly beg leave to approach Your Majesty, to express our sentiments on a subject of deep interest to your faithful subjects of Upper Canada. We perceive by the provisions of an Act passed during the last Session of the Imperial Parliament, that Your Majesty is empowered to order the appropriation of a further allotment of land within this Province, for the support and maintenance of a Protestant Clergy, in lieu of that portion of the lands already set apart for the purpose (called the Clergy Reserves) which has lately been, or is about to be sold to the Canada Land Company.

We would most reluctantly appear to Your Majesty as unfriendly to the cause of Religion, but when we consider that one-seventh of all the surveyed lands within this Province, is already, by an Act passed in the 31st year of the Reign of His late Majesty, appropriated to that object, and are of opinion, that the extent of the present reservation is injurious to the prosperity of the Colony. We feel a strong desire that no further appropriation may be made, but that Your Majesty will be graciously pleased to submit to your Parliament the expediency of repealing so much of the late Act as permits the said further allotment.

We further most humbly represent, most gracious Sovereign, that the lands set apart in this Province, for the maintenance and support of a Protestant Clergy, ought not to be enjoyed by any one denomination of Protestants, to the exclusion of their christian brethren of other denominations, equally conscientious in their respective modes of worshipping God, and equally entitled, as dutiful and loyal Subjects, to the protection of Your Majesty's benign and liberal Government. We therefore humbly hope, it will, in Your Majesty's wisdom, be deemed expedient and just that, not only the present Reserves, but that any funds arising from the sales thereof, should be devoted to the advancement of the Christian Religion generally, and the happiness of all Your Majesty's Subjects of whatsoever denomination; or if such application, or distribution, should be deemed inexpedient, that the profits arising from such appropriation, should be applied to the purposes of Education, and the general improvement of this Province.

Commons' House of Assembly, }
27th January, 1826. }

JOHN WILSON,
SPEAKER.

[9] p. p. 12. Despatch from Earl Bathurst, to His Excellency Sir P. Maitland, 11th June, 1826.

(Copy)

DOWNING-STREET, 11th June, 1826.

Sir—I have laid before the King the Address of the Legislative Assembly of Upper Canada, praying that His Majesty would be graciously pleased to submit to Parliament the propriety of repealing so much of the Act of 6th Geo. 4 cap. as permits the appropriation of lands in lieu of the Clergy Reserves. I have received His Majesty's commands to acquaint you that he is persuaded the House of Assembly would never have concurred in this Address, if they had been apprized of the true intent of the Act of Parliament referred to, which had not for its object any increase of the amount of the Reserves, specially allotted by the Imperial Parliament for the Established Church.

I have the honor to be, &c. &c. &c.

BATHURST.

Major General Sir P. Maitland, K. C. B.
&c. &c. &c.

Resolutions passed by the Assembly of Upper Canada, on 22d December, 1826:

1. Resolved—That the Despatch of the Right Honorable Earl Bathurst, His Majesty's Principal Secretary of State for the Colonies, communicated to this House on the 12th inst. by His Excellency the Lieutenant Governor, in answer to the Address to His Majesty of this House at its last Session, respecting the Clergy Reserves, is unsatisfactory to this Assembly, inasmuch as it is silent on a material part of the respectful representation of this House contained in the said Address.

2. Resolved—That the Imperial Parliament, by conferring on the people of Upper Canada a constitution in many important respects similar to that enjoyed by the inhabitants of the Parent State, was desirous of promoting the happiness and prosperity of all persons who might become resident in the Colony.

3. Resolved—That the appropriation of a seventh of all the surveyed lands within this Province, for the support and maintenance of a Protestant Clergy is a striking manifestation of the paternal regard of the Government of the Mother Country to all His Majesty's subjects; and, with power by the Assembly to legislate thereon, a most important point of said constitution.

4. Resolved—That the Imperial Legislature foresaw the probability of circumstances in the condition of the inhabitants of this Colony which might render an alteration in the law with respect to the Clergy Reservation expedient, and wisely left the Provincial Parliament at liberty to make such changes therein as the future state of society might require.

5. Resolved—That the construction given to the Imperial Act, which appropriates the Clergy Reserves to individuals connected with the Church of England, and the determination of the Clergy of that Church to withhold from all other denominations of Protestants residing within the Province, the enjoyment of any part of the benefits arising, or which may arise from the lands so set apart, call for the immediate attention of the Provincial Legislature to a subject of such vital interest to the public in general, and that such claim by the Protestant Episcopal Church is contrary to the spirit and meaning of the 31st Geo. III. and most injurious to the interests and wishes of the Province.

6. Resolved—That a comparatively small proportion of the inhabitants of Upper Canada are members of the Church of England, and therefore ought not

in justice to desire the sole enjoyment, by their clergy, of all the advantages which these lands present, to the exclusion of their fellow-subjects, although equally loyal and firm in their attachment to His Majesty's Government and the Constitution.

7. Resolved—That in a thinly inhabited country, such as Upper Canada, where the means of moral instruction to the poor are not easily obtained, it is the bounden duty of the Parliament to afford every assistance within its power towards the support of Education.

8. Resolved—That the present provision for the support of District and Common Schools is quite inadequate to the wants of the people, and ought by every reasonable exertion to be increased, so as to place within the reach of the poorest inhabitant the advantages of a decent education.

9. Resolved—That it is the opinion of a great proportion of the people of this Province that the Clergy lands, in place of being enjoyed by the Clergy of an inconsiderable part of the population, ought to be disposed of, and the proceeds of their sale applied to increase the provincial allowance for the support of District and Common Schools, and the endowment of a Provincial Seminary for learning, and in aid of erecting places of public worship for all denominations of christians.

10. Resolved—That it is expedient to pass a Bill authorising the sale of the Clergy Lands within this Province, for the purposes set forth in the foregoing resolution, and to address His Majesty, humbly soliciting that he will be graciously pleased to give the Royal assent to said Bill.

11. Resolved—That the number of the Protestant Episcopal Church in the Provinces bears a very small proportion to the number of other christians, notwithstanding the pecuniary aid long and exclusively received from the benevolent society in England by the members of that church, and their pretensions to a monopoly of the Clergy Reserves.

Extract from British Act, 6th Geo. 4th, chap. 75, for the sale of a part of the Clergy Reserves to the Canada Company :

2. AND BE IT FURTHER ENACTED—That His Majesty shall be, and he is hereby empowered to sell and convey to the said Company, and their successors, in fee simple, for such valuable consideration as shall be agreed upon between His Majesty and the said Company, as he shall deem expedient, and upon such conditions, and with and subject to such restrictions, limitations, and provisoes, as His Majesty may be pleased to impose, one equal half, part, and no more, of the said reserved lands in the Province of Upper Canada, called “ the Clergy Reserves.”

3. AND BE IT FURTHER ENACTED—That in case His Majesty shall see fit to set apart and appropriate in the said Province of Upper Canada, other waste lands of and belonging to His Majesty, of equal value with that part of the said Clergy Reserves which His Majesty is so empowered as aforesaid to sell and convey to the said Company, it shall and may be lawful for His Majesty, and he is hereby empowered by any order to be by him for that purpose made, by and with the advice of his Privy Council, to declare, that the lands so set apart and appropriated shall thenceforth be substituted and exchanged for such last mentioned part of the said Clergy Reserves; and then, and in that case, such substituted lands shall, from and after the issuing of any such order, be held, set apart, and appropriated upon, for, and to such and the same uses, trusts, and intents, and purposes, upon, for, and to which the said Clergy Reserves are now held, set apart, and appropriated.

[10.] p. p. 14. Extract from Earl Bathurst's Speech in the House of Lords.
See Appendix No. 3, p. viii.

[11.] p. p. 15. Extract of a Letter from the Colonial Secretary to Dr. Mearns in 1825.

"That whenever a congregation in any of those Provinces shall have erected a suitable place of worship, and be prepared to acknowledge the jurisdiction of the Church of Scotland, and to contribute according to their means towards the maintenance of a Minister,—upon their presenting a memorial to the Governor in Council, the Governor in Council will have received His Majesty's commands, authorizing him, upon being satisfied that these conditions have been duly complied with, to contribute to the support of the clergyman in such proportion as together with the contribution of the parties presenting the memorial, may be sufficient to afford him a competent maintenance—such contribution, however, being necessarily limited by the funds, which it may be in the power of the Crown to appropriate to such purpose, and by the other claims which may exist upon those funds."

[12.] p. p. 15. Extract from the Memorial by Dr. Lee, Convener of Committee of General Assembly, to the Secretary of State for the Colonies.

"The attention of the Memorialists has of late been specially called to the condition of the adherents of the Church of Scotland resident in Upper Canada, on whose behalf claims have been put forth for a share in the proceeds of the lands reserved by the 31st of his late Majesty, c. 31, for the support of the Protestant clergy. The General Assembly, in 1823, directed this committee to support the application by all means in their power; and it is in obedience to the command of the last General Assembly that this Memorial is presented.

"Your Memorialists cannot conceive it to admit of a question that, under the designation of a Protestant clergy, it must have been the intention of the Legislature to include, not only the clergy deriving their orders from bishops of the Church of England, but all such as might at any time be regularly ordained by Presbyteries of this National Church. The law of the land has applied the same general designation of Protestant indiscriminately to the members of either of the two established churches within the United Kingdom. In the ratification of the Treaty of Union, and in the Act of the Parliament of England entitled 'An Act for securing the Church of England as by law established,' the expression, Protestant Religion, is used at least as frequently in combination with Presbyterian church government as with the government of the Church of England. And your Memorialists are not aware of any law which can exclude the members of the Established Church of Scotland from the same privileges which are claimed and enjoyed by the members of the Church of England, resident in a colony which is confessedly British.

Answer of Colonial Secretary to the above Memorial.

Downing Street, 4th July, 1827.

SIR—

I am directed by Viscount Goderich to acknowledge the receipt of your letter of the 8th ultimo, urging the claims of the Presbyterian Ministers to par-

ticipate in the lands reserved for the support of a Protestant clergy in Canada, and I am to request that you will communicate to the Committee of the General Assembly of the Church of Scotland, that instructions were conveyed by Lord Bathurst to the Lieutenant Governor of Upper Canada in October last, authorizing the appropriation of £750 per annum from the proceeds of the sale of Crown lands to the Canada Company, which Lord Goderich trusts will evince the favorable disposition of his Majesty's Government towards the clergy of the Presbyterian Church, and whenever an available fund shall be established from the proceeds of the clergy reserves, the claims of the members of the Church of Scotland will be taken into consideration.

I have the honor to be,

Sir, your most obedient humble servant,

R. W. HORTON.

[13.] p. p. 15. Letter from Mr. Secretary Mudge, to the late John Crocks, Esquire.

Copy.

GOVERNMENT HOUSE, }
22d January, 1829. }

SIR—

With reference to your letter of the 17th inst., I am directed to acquaint you that the Lieutenant Governor, about the time your letter arrived, received several applications soliciting a portion of the sum which is to be appropriated for the support of your Church, and as he calculated that about £90 sterling per annum might be granted to each of the congregations that had recently applied, as well as to five ministers that he had found by warrants were actually in receipt of salaries, it was his opinion that a fixed yearly sum should be paid to each minister, which he imagined should be limited to £90 sterling; but he now finds from his own arrangements and those of his predecessor, that there are thirteen ministers in communion with the Church of Scotland, either actually in receipt of salaries or are in expectation of them. He is compelled to make such division of the sum allotted for their salaries, which he wished to avoid, and I am desired to state to you, that your minister will be entitled to receive only £57 sterling, which amount will never be reduced, and that his salary will fluctuate between £90 and £57 sterling, in proportion as the several ministers come on the list for payment:

I have the honor to be, &c. &c. &c.

Z. MUDGE.

[14.] p. p. 17. Copy of the opinion of His Majesty's Law Officers relative to the Clergy Reserves, dated 15th November, 1819.

DOCTOR'S COMMONS, 15th Nov., 1819.

MY LORD—

We are honored with your Lordship's commands of the 14th September last, stating that doubts have arisen how far, under the construction of the Act

passed in the 31st year of his present Majesty (c. 31.) the Dissenting Protestant Ministers resident in Canada have a legal claim to participate in the lands by that Act directed to be reserved as a provision for the support and maintenance of a Protestant Clergy.

And your Lordship is pleased to request, that we would take the same into consideration and report to your Lordship, for the information of the Prince Regent, our opinion, whether the Governor of the Province is either required by the Act, or would be justified in applying the produce of the reserved lands to the maintenance of any other than the Clergy of the Church of England resident in the Province; and in the event of our being of opinion that the Ministers of Dissenting Protestant congregations having concurrent claim with those of the Church of England, further desiring our opinion, whether, in applying the reserved lands to the endowment of rectories and parsonages, as required by the 38th clause, it is incumbent upon his Majesty to retain a proportion of those lands for the maintenance of the Dissenting Clergy, and as to the proportion in which, under such a construction, the provision is to be assigned to the different classes of Dissenters established within the Province.

We are of opinion, that though the provisions made by 31st George III. c. 31, § 36 and 42, for the support and maintenance of a Protestant Clergy, are not confined solely to the clergy of the Church of England, but may be extended also to the clergy of the Church of Scotland, if there are any such settled in Canada, (as appears to have been admitted in the debate upon the passing of the Act,) yet that they do not extend to the Dissenting Ministers, since we think the terms, Protestant Clergy, can apply only to Protestant Clergy recognized and established by law.

The 37th section, which directs "that the rents and profits of the lands, &c. shall be applicable solely to the maintenance and support of a Protestant clergy," does not specify by what authority the rents and profits are to be so applied. Supposing the Governor to be duly authorized by the Act to make such application, we think that he will be justified in applying such rents and profits to the maintenance and support of clergy of the Church of Scotland, as well as those of the Church of England, but not to the support and maintenance of Ministers of Dissenting Protestant congregations.

With respect to the second question, the 38th clause, "which empowers His Majesty to authorize the Governor to constitute and erect parsonages or rectories according to the establishment of the Church of England," provides also, "that he may endow every such parsonage or rectory with so much of the lands allotted and appropriated, in respect to any land within such township or parish which shall have been granted, as the Governor, with the advice of the Executive Council, shall judge to be expedient."

Under these terms he might endow any particular parsonage or rectory, with the whole lands allotted and appropriated in that township or parish.

It would be inconsistent with this discretionary power, that any proportion of such lands should be absolutely retained for any other Clergy than those mentioned in that clause, and we think that it is not incumbent on his Majesty so to retain any proportion of such lands.

We have the honor to be, my Lord,

Your Lordship's most obedient humble servants,

(Signed)

CH'R. ROBINSON,
R. GIFFORD,
J. S. COPLEY.

EARL BATHURST,

&c. &c. &c.

Names of Members who composed the Select Committee of the House of Commons, on the civil government of Canada, in 1828.

2d May.

Mr. Secretary Huskisson, Mr. Wynn, Mr. Frankland Lewis, Mr. Sturges Bourne, Mr. Solicitor General, Sir James Mackintosh, Mr. Wilmot Horton, Mr. Vesey Fitz Gerald, Mr. Stanley, Mr. Stuart Wortley, Lord Francis Leveson Gower, Mr. Bingham Baring, Mr. Evelyn Denison, Mr Hyde Villiers, Mr. Maurice Fitz Gerald, Mr. Loch, Mr. Archibald Campbell, Mr. Fazakerly, Mr. Wallace, Lord Viscount Sandon, Mr. Labouchere, Sir George Murray.

Extract from the Evidence of the Right Honorable R. W. Horton, M. P., before the Select Committee of the House of Commons, July, 1828.

From the opportunities you have had of ascertaining the feelings and opinions of the people of Canada on this subject, should you not be disposed to say that Government and the Legislature of England should be very cautious of doing any thing which could give rise to the slightest suspicion that there was any intention of establishing a dominant Church in that country?—The Act of 31st Geo. III. c. 31, clause 36, established the Clergy Reserves, that is directed that one-seventh part of the grants of land should be allotted and appropriated for the support and maintenance of a Protestant Clergy within the Colonies; and it is stated that this is done for the purpose of making the best arrangement, with a view to the due and sufficient support and maintenance of a Protestant Clergy within the said Provinces. The 37th clause enacts, “that all and every the rents, profits or emoluments which may at any time arise from such land so allotted and appropriated shall be applicable solely to the maintenance and support of a Protestant Clergy, and to no other use or purpose.”

Up to this point therefore no reference is made to an endowed Church; but the 38th clause proceeds to enact, “that it should be lawful for his Majesty, &c. &c. to constitute and erect within every township or parish, which now is or hereafter may be formed, constituted or erected within either of the Provinces of Lower or Upper Canada, one or more parsonage or rectory, or parsonages and rectories according to the establishment of the Church of England, and from time to time, by an instrument under the Great Seal of such Province, to endow every such parsonage or rectory with so much or such part of the lands, &c. “meaning the Clergy Reserves, as it might be judged to be expedient under the then existing circumstances of such township or parish then to appropriate.” The next clause attaches the same terms and conditions to those parsonages or rectories, and the same performance of duties, as are incident to a parsonage or rectory in England. The next clause places them under the jurisdiction of the Bishop. *The 41st clause gives a power and a most important one, to the local legislature, of varying or repealing several provisions there recited in any Act or Acts, which, being passed by the two Assemblies, should receive the consent of the Crown.*

In answer therefore to the inquiry, whether I should not be disposed to recommend caution, lest any suspicion should arise that there was an intention of establishing a dominant Church in that Colony, I beg leave to be permitted to make the following observations: It is perfectly clear to me, that the framers of that Act entertained the erroneous impression that this system of reserved lands would in a short time, comparatively speaking, produce a fund which might be generally applicable for the purposes of furnishing income to the Cler-

gy of the Established Church, whether of England or of Scotland, "*as I conceive the words "Protestant Clergy"* to refer to Clergy of the two recognized establishments; and it appears to me, from the construction of those clauses, that a special endowment of land, in cases where there was a demand, for the Church of England was provided for, whereas there was no such provision made for the Scotch Church: I consequently consider that I am justified in inferring that the Church of England was intended to be so far a dominant church as to have the advantage of lands specifically appropriated for its maintenance, as contradistinguished from the Scotch Church, which was to have such a proportion of the profits, rents and emoluments of those reserves as, under the discretion of the Executive Government, it might be expedient to allot to them. But it appears to me quite conclusive, that there was no intention of necessarily establishing the Church of England as a dominant church, inasmuch as the 41st clause gives a power to the local Legislatures, with the consent of the Crown, of altering all the provisions which are contained in the 36th, 37th, 38th, 39th and 40th clauses.

[15.] p. p. 18. Extract from Lord Goderich's Despatch, to His Excellency Sir John Colborne, 8th November, 1832 :

With respect to the charge shewing an undue preference to preachers of religion belonging to the established Churches of this country, it is so utterly at variance with the whole course of policy which it has been the object of any despatches to yourself to prescribe, that I cannot pause to repel it in any formal manner.

Message from His Excellency Sir John Colborne, to the Assembly of Upper Canada, 25th January, 1832 :

J. COLBORNE,

The Lieutenant Governor has received His Majesty's commands to make the following communication to the House of Assembly, in reference to the lands, which, in pursuance of the constitutional Act of this Province, have been set apart for the support and maintenance of a Protestant Clergy.

The representations which have at different times been made to His Majesty, and His Royal Predecessors, of the prejudice sustained by His faithful subjects in this Province, from the appropriation of the Clergy Reserves, have engaged His Majesty's most attentive consideration.

His Majesty has with no less anxiety considered how far such an appropriation of Territory is conducive, either to the temporal welfare of the Ministers of Religion in this Province, or to their spiritual influence. Bound no less by His personal feelings, than by the sacred obligations of that station to which Providence has called him, to watch over the interests of all the Protestant Churches within his Dominions; His Majesty could never consent to abandon those interests with a view to any objects of temporary and apparent expediency.

It has therefore been with peculiar satisfaction that in the result of His enquiries into this subject, His Majesty has found that the changes sought for by so large a proportion of the inhabitants of this Province, may be carried into effect without sacrificing the just claims of the established Churches of England and Scotland. The waste lands which have been set apart as a provision for

the Clergy of those venerable bodies, have hitherto yielded no disposable revenue. The period at which they might reasonably be expected to become more productive is still remote. His Majesty has solid grounds for entertaining the hope that, before the arrival of that period, it may be found practicable to afford the Clergy of those churches, such a reasonable and moderate provision as may be necessary for enabling them properly to discharge their sacred functions.

His Majesty, therefore, invites the House of Assembly of Upper Canada, to consider how the powers given to the Provincial Legislature by the Constitutional Act, to vary or repeal this part of its provisions, can be called into exercise most advantageously, for the spiritual and temporal interests of His Majesty's faithful subjects in this Province.

Government House, }
25th January, 1832. }

Extract from the Address of the Legislative Council of Upper Canada, to the King :

We look upon these allotments as the only resource from whence the Ministers of Religion can ever derive public support in this Colony. But while we decline to take part in any measure which would deprive the present and future generations of advantages, in their nature inestimable, and which we consider it to be among the first and most sacred duties of a Legislative body to ensure and perpetuate ; we nevertheless deeply regret, that the questions which have been agitated with respect to the Clergy Reserves should continue unsettled ; and we think it is for many reasons, much to be desired, that a speedy and final decision should take place of the questions which have arisen upon the effect of the Statute referred to, and that it should be plainly, certainly and firmly established, to what specific objects the Clergy Reserves shall be permanently applied. Confiding freely in the wisdom and justice of Your Majesty and of Parliament, we earnestly hope, that with as little delay as the subject may admit of, such an enactment may be passed as shall not leave any room for doubt or question, in regard to the objects to which the proceeds of the Clergy Reserves are to be applied, and that having regard to the present condition and future welfare of this colony, and maturely considering whatever has been urged, or may be urged in regard to these Reserves, Your Majesty and the Imperial Parliament will by some measure, which shall be final and unequivocal, make such an appropriation of them as shall appear to be most consistent with a due regard to religion, to the principles of our constitution, and to the permanent welfare and tranquillity of the Province.

Extract from Lord Glenelg's Instructions to Sir F. B. Head, on his assuming the Administration of the Government of Upper Canada :

The chief practical question then, which at present demands consideration, is whether His Majesty should be advised to recommend to Parliament the assumption to itself of the office of deciding on the future appropriation of these lands. There are two distinct reasons, both of which appear to me conclusively to forbid that course of proceeding.

FIRST—Parliamentary legislation on any subject of exclusively internal concern, in any British colony possessing a representative assembly, is, as a general rule, unconstitutional.

It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception. But important as is the question of the Clergy Reserves in Upper Canada, yet I cannot find in the actual state of the question any such exigency as would vindicate the Imperial

Legislature in transferring to themselves the settlement of this controversy.—The conflict of opinion between the two Houses upon this subject, much as it is to be lamented, yet involves no urgent danger to the peace of society, and presents no insuperable impediment to the ordinary administration of public affairs; although a great evil, it is not such as to exclude every hope of mitigation by the natural progress of discussion, and by the influence of that spirit which, in public affairs, not seldom suggests to parties, alike solicitous for the general good, some mutual surrender of extreme views and some compromise on either side of difference, which at first sight might have appeared irreconcilable.

Until every prospect of adjusting this dispute within the Province itself shall have been distinctly exhausted, the time for the interposition of Parliament will not have arrived, unless, indeed, both Houses shall concur in soliciting that interposition; in which event, there would of course be an end to the constitutional objections already noticed.

The second ground on which I think myself bound to abstain from advising His Majesty from referring this question immediately to Parliament, is that the authors of the constitutional act, have declared this to be one of those subjects, in regard to which the initiative is expressly reserved and recognized as falling within the peculiar province and the special cognizance of the local Legislature, although its ultimate completion is no less distinctly made to depend, in addition to the ordinary submission to His Majesty, on the acquiescence of the Imperial Parliament.

It is not difficult to perceive the reasons which induced Parliament in 1791, to connect with a reservation of land for ecclesiastical purposes the special delegation to the Council and Assembly of the right to vary that provision by any bill, which being reserved for the signification of His Majesty's pleasure, should be communicated to both Houses of Parliament for six weeks before that decision was pronounced. Remembering, it should seem, how fertile a source of controversy ecclesiastical endowments had supplied throughout a large part of the christian world, and how impossible it was to foretell with precision what might be the prevailing opinions and feelings of the Canadians on this subject at a future period, Parliament at once secured the means of making a systematic provision for a Protestant clergy and took full precaution against the eventual inaptitude of that system to the more advanced stages of a society then in its infant state, and of which no human foresight could divine the more mature and settled judgment.

In the controversy, therefore, respecting ecclesiastical endowments which, at present divides the Canadian Legislature, I find no unexpected element of agitation, the discovery of which demands a departure from the fixed principles of the constitution, but merely the fulfilment of the anticipations of Parliament in 1791, in the exhibition of that conflict of opinion for which the Statute of that year may be said to have made a deliberate preparation. In referring the subject to the future Canadian Legislature, the authors of the constitutional Act must be supposed to have contemplated the crisis at which we have now arrived—the era of warm and protracted debate, which in a free government may be said to be a necessary precursor to the settlement of any great principle of national policy. We must not have recourse to an extreme remedy merely to avoid the embarrassment, which is the present, though temporary result of our own deliberate legislation.

I think, therefore, that to withdraw from the Canadian to the Imperial Legislature the question respecting the Clergy Reserves, would be an infringement on that cardinal principle of Colonial Government which forbids Parlia-

mentary interference, except in submission to an evident and well established necessity.

Despatch from Lord Glenelg to Sir F. B. Head, July, 1837 :

DOWNING-STREET, July, 1837.

Sir—I transmit for your consideration the enclosed copy of a petition to His late Majesty, from the delegates of the Presbyterian congregations in Canada, appointed to meet at Cobourg, which was placed in my hands by Mr. Morris, who is acting in this country as agent for the petitioners. I also enclose copies of two letters addressed to me by Mr. Morris on the 13th and 17th inst. I have laid this petition before the Queen, and have received Her Majesty's commands to instruct you to convey to the petitioners the assurance that Her Majesty's Royal Prerogative will invariably be exerted in maintaining, in Upper Canada, those rights with which the Churches of England and of Scotland are invested by law within the Province. It is the earnest desire of the Queen that all the various communities of Christians existing in that part of Her Majesty's dominions, may unite together in the spirit of mutual toleration and good will in the diffusion of the knowledge and the principles of Christianity.

Her Majesty is persuaded that it would be superfluous to lay on you Her injunctions to afford your utmost support and countenance towards the completion of an object the most important of any to which your well proved zeal for the public good could be directed.

With reference to the remarks which Mr. Morris has made respecting the unequal share which the Scots Church has hitherto received of the assistance of the Crown, you will acquaint the petitioners that the arrangements which have been made for the settlement of wild lands in Upper Canada, will hereafter render it impossible for Her Majesty's Government to redress that complaint, but that Her Majesty will gladly concur in any measure which the Legislative Council and Assembly may recommend for affording to the Church of Scotland, in the Province, the means of advancing the great work of religious instruction.

The design which Mr. Morris conceives to be entertained of excluding the ministers and members of the Scots Church from a voice in the council of King's College will, I am convinced, not be adopted by you. On the contrary, you will, I am persuaded, exercise the patronage which the law has vested in you in that respect, in such a measure as effectually to remove any misgivings with which the petitioners may have been affected on that head.

I have, &c.

GLENELG.

To Sir F. B. Head.

[16] p. p. 20. Extract from the Address of the Wesleyan Methodist Conference to the King, 13th June, 1836 :

We also beg leave most humbly to represent to Your Majesty that we, together with the great majority of your loyal subjects, are conscientiously and firmly opposed to the recognition of any Church Establishment within the Province. It is, therefore, with extreme regret we have learned that during the past year fifty-seven Rectories have been established, and endowed out of the

lands set apart for the support of a Protestant Clergy, notwithstanding the wishes of its inhabitants, so often constitutionally expressed by petition, and through their representatives in the House of Assembly.

We should not discharge the duty we owe to Your Majesty in the present posture of the affairs of this Province, did we not most humbly and respectfully convey to Your Majesty our full conviction, that nothing could tend more directly to weaken the attachment of the people of this country to the parent state than the continuance of this system of exclusive patronage of any one church ; nor could any measure more happily conduce to allay existing agitation and dissension, and to produce a more affectionate and enthusiastic devotion to Your Majesty's Government, than an assurance that this system will no longer be pursued.

Signed by order and on behalf of the Conference.

WM. LORD, President,

WM. CASE, Secretary.

[17] p. p. 20. Extract of a Despatch from Lord Glenelg, to Sir F. B. Head, dated

DOWNING-STREET, 6th July, 1837.

You are aware that your Despatch of the 17th December, 1836, contained the first official intimation which ever reached me, of the Rectories having been either established or endowed. The fact had been asserted in Parliament, but I was not only officially uninformed, but really ignorant that it had occurred—I therefore requested you to supply me with the necessary information, and until it reached me, in the month of February last, I was entirely destitute of all authentic intelligence, as to what had really been done. You will not, I trust, even for a moment suppose, that I refer, in the spirit of censure or complaint, to the silence of the Provincial Government on this occasion. It admits of an obvious explanation. The creation and endowment of the Rectories was almost the last act of Sir John Colborne's administration, and at that time you were actually on your way from New-York to Toronto. Your Predecessor probably assumed that the proceeding would be reported by you, he having at last, as it may well be imagined, scarcely leisure enough for the discharge of his many indispensable and urgent public duties. On the other hand, it is impossible not to respect the feelings, which indisposed you to enter on the subject. Regretting the measure itself, as creating a new embarrassment in your path at that time beset by difficulties of no ordinary kind, and naturally regarding it as irremediable, you preferred to contend with the obstacle silently, rather than to avail yourself of it either as an apology in the event of failure, or as enhancing your own merit in the event of success. To this generous solicitude for the credit of your immediate predecessor, I have always attributed your omission to report his proceedings with regard to the Rectories—and I fully admit, that, with the opinion which you entertained, and could scarcely have failed to entertain, as to the validity of the act itself, the motives for making it a subject of correspondence were but few and of no great weight. Although for the reasons to be subsequently stated, I am compelled to think that the creation and endowment of the Rectories, were not lawful or valid measures, yet it would be most foreign to my real intention, if I should be supposed to cast any doubt on the propriety of Sir John Colborne's conduct in reference to them.

That distinguished officer has given too many proofs of his devoted zeal for His Majesty's service and for the good of the King's subjects, to permit the admission of even a surmise injurious to his public spirit on this or any other occasion: and although I may differ from him in opinion as to the expediency of establishing the Rectories, especially at the moment chosen for that purpose, yet I am convinced that Sir John Colborne would, as readily as any other man, acknowledge that opposite views of the public interest upon any particular question may be entertained by men engaged in the same branch of His Majesty's service, without derogating in the slightest degree from their mutual esteem and confidence. Indeed, in proportion to the strength of those feelings will usually be the freedom with which such opposite views are avowed and discussed.

On receiving your Despatch of the 17th December, it appeared to me very questionable, whether any adequate legal authority existed for the creation or endowment of the Rectories. I did not indeed perceive any possible ground for disputing the right of the Lieutenant Governor in Council to proceed to that measure, if previously sanctioned by the King. But on referring to the commissions of Lord Aylmer and Gosford, to the general instructions accompanying them; to the correspondence between this department and the Provincial Government, and to the Minutes of the Executive Council of the 15th January, 1836, it appears to me that no such sanction had ever been given. The grounds of this opinion you will learn from the accompanying copy of the communication which I thought it necessary to address to the King's Advocate, and to the Attorney and Solicitor General.

The Law Officers of the Crown received that reference on the 12th April, and reported to me their answer on the 8th ultimo. The delay is readily accounted for by the great importance of the question, and by the anxiety of His Majesty's legal advisers to offer no immature judgment on such an occasion. I enclose for your information a copy of their Report. You will find that they declare their opinion to be that the erection and endowment of the fifty-seven Rectories by Sir John Colborne, are not valid and lawful acts.

[18.] p. p. 21. Despatch from Earl Bathurst, to Sir P. Maitland, directing *him* to form Rectories.

DOWNING-STREET, 22d July, 1825.

SIR—

I have received His Majesty's commands to direct, that you do from time to time, with the advice of the Executive Council for the affairs of the Province of Upper Canada, constitute and erect, within every Township or Parish, which now is, or hereafter may be, formed and constituted or erected within the said Province, one or more Parsonage or Rectory, or Parsonages or Rectories, according to the Establishment of the Church of England, and that you do from time to time, by an Instrument under the Great Seal of the said Province, endow every such Parsonage or Rectory with so much or such parts of the land so allotted and appropriated as aforesaid, in respect of any lands within such Township or Parish, which shall have been granted subsequently to the commencement of a certain Act of the Parliament of Great Britain passed in the 31st year of the reign of His late Majesty King George the 3d, entitled 'An Act to repeal certain parts of an act passed in the 14th year of His Majesty's reign, entitled An Act for making more effectual provision for the Govern-

ment of the Province of Quebec in North America, and to make further provision for the Government of the said Province, or of such lands as may be allotted and appropriated for the same purpose, by or in virtue of any Instruction which may have been given by His said late Majesty before the commencement of the said Act, as you shall, with the advice of the said Executive Council, judge to be expedient under the existing circumstances or such Township or Parish.

You shall also present to every such Parsonage or Rectory an Incumbent or Minister of the Church of England who shall have been duly ordained according to the rites of said Church, and supply from time to time such vacancies as may happen therein.

I have the honor to be. &c.

BATHURST.

Major General Sir Peregrine Maitland, K. C. B.

&c. &c. &c.

[19] p. p. 24. Extract from an Act of the Legislature of New-Brunswick, Incorporating Churches, passed 9th March, 1832:

An Act to repeal all the laws now in force relating to Saint Andrew's Church, in the City of Saint John, and for incorporating certain persons' Pew-holders of the said Church, and of the several Churches erected or to be erected in this Province, in connection with the Church of Scotland—

Whereas, according to the forms and usages of the Church of Scotland as by law established, the spiritual and temporal affairs of the said Church are kept separate and distinct: and, whereas, the present Acts of Incorporation vesting the temporal affairs of Saint Andrew's Church, in the city of Saint John, in connection with the Church of Scotland, in the Minister and Elders of the said Church, is at variance with the forms and usages of the said Church of Scotland. And, whereas, it appears to be the desire of the members of the said Church in Saint John, and of a large majority of the Churches now established in this Province, in connection with the said Church of Scotland, to be incorporated in strict conformity with the forms and usages aforesaid, and to enable them to manage their temporal affairs in accordance therewith:

1. Be it therefore enacted by the Lieutenant Governor, Council and Assembly—That an Act made and passed in the fifty-sixth year of the Reign of His late Majesty King George the Third, entitled "An Act to enable the Minister and Elders for the time being of the Church in connection with the Kirk of Scotland, lately erected in the city of Saint John, to hold the same to them and their successors for ever, and for other purposes therein mentioned;" and an Act passed in the fifty-eighth year of the same Reign, entitled "An Act to extend the powers of the Minister and Elders of the Kirk of Scotland in the city of Saint John," be, and the same are hereby repealed.

ADDITIONAL APPENDIX.

[No. 1. See Appendix, No. 4—p. xii.]

Speech of Mr. Wilmot Horton on the Report for the sale of the Canada Clergy Reserved Land, February, 1827 :

Mr. W. Horton proceeded briefly to state the nature of the Bill. The committee were aware, that there was a bill before the House relative to the appropriation of certain districts of land which had been reserved by the Canada Act of 1791, for the maintenance of the Clergy of the Church of England, officiating in Canada. The principle of that appropriation bill he would not commit on that occasion, as there existed some difference of opinion upon it. The object of the present bill was of another nature. The lands so reserved, were by the Canada Act, declared inalienable, and, on that account, had produced very little income for the purposes on account of which they had been reserved; though consisting of millions of acres, they had not, up to the present time, netted more than £400 a year. The object of the present bill was to get rid of part of them by sale, and to fund the produce for the purposes originally intended by the Canada Act. And here, he felt himself authorised to state, that the Government would have no objection to appropriate part of the profits to the maintenance of the Clergy of the Church of Scotland in Canada, as well as to the support of the Established Church—and the reason why such appropriation had not taken place before was, that the lands being inalienable, and, therefore, generally unproductive, did not bring such an amount of income as would be sufficient to support the Clergy of even the Established Church. The present bill, then, left the matter of appropriation still open. The progressive sale of lands was its sole object; and, as to the objection, that the maintenance of the Clergy of the Church of Scotland was not contemplated in that appropriation, he would read the House a letter on the subject from the Bishop of Quebec, which would set all doubt upon the point at rest. (Here the Right Honorable Gentleman read a letter from the Bishop of Quebec, the sum of which purported that in the writer's opinion, the maintenance of the Clergy of the Church of Scotland, out of the profits of the reserved lands, was warranted by the Act of 1791.) Besides the particular benefit derivable to the Clergy of Canada from the sale of part (100,000 acres) of these lands, and the funding of the proceeds, the general Colony would find the measure salutary to its effect on the improvement of such large tracts of ground."

[No. 2.]

Proceedings of the English and Scots Commissioners, appointed to treat of an Union, 10th November, 1702 :

At the Council Chamber, in the Cock Pit, }
Martis, 10 die Nov. 1702. }

In pursuance of Her Majesty's Commissions, under Her respective Great Seals of Scotland and England, and of Her Majesty's orders adjourning their

Meeting to this day, the Lords Commissioners of both Kingdoms met at the Council Chamber in the Cock Pit.

PRESENT.

SCOT.

Duke of Queensbury, Marquis of Annandale, Duke of Argyle, Earle of Seafeld, Viscount of Tarbat, Viscount of Stair, Viscount of Roseberrie, Lord Boyle, Lord President of the Session, Lord Treasurer Deput, Lord Justice Clerk, Sir James Falconer, Douglas of Cavers, Sir David Dalrymple, Sir James Smallet, Sir Patrick Johnston, Mr. Montgomerie, Mr. Scrimgeor, Mr. Allardice.

ENGL.

Arch. Bishop of Canterbury, Lord Keeper, Lord President, Lord Privy Seal, Duke of Devonshire, Lord Chamberlane, Earle of Nottingham, Lord Bishop of London, Sir Charles Hedges, Lord Chiefe Justice Trevor, Mr. Chancellor of the Dutchy, Sir Christopher Musgrave, Sir John Cooke, Robert Harley, Esq. Charles Godolphin, Esq. Samuel Clerk, Esq.

After they had taken their places the Commissions were opened and read by the respective Secretaries.

The Lord Keeper of England addressing himself to the Lords Commissioners for Scotland, spoke in hæc verba :

My Lords—Wee the Commissioners for England do with great satisfaction meet your Lordships upon this occasion, hoping that by this Congress the great business for which Her Majesty has been pleased to grant these Commissions may be effected.

That England and Scotland already united in allegiance under one head, the Queen, may for ever hereafter become one people ; one in heart and mutual affections, one in interest, one in name, one in deed, a work which if it can be brought to pass, promiseth a lasting happiness to us all.

With great sincerity wee desire this Union, and wee meet your Lordships with hearts fully determined to enter upon such considerations and into such measures with your Lordships as are proper for bringing the same to the desired conclusion.

On our parts nothing shall be wanting that may conduce to a happy period of this great work.

To which my Lord Duke of Queensbury, on the part of the Lords Commissioners for Scotland, replied in hæc verba :

My Lords—The Union of the two Kingdoms has been much desired both before and since their being under one Sovereign, and I hope it is reserved to Her Majesty, for the glory of her Reign, to finish the design which hath been often attempted by Her Majesty's Predecessors.

My Lords—I do consider this Union to be highly advantageous for the peace and wealth of both Kingdoms, and a great security for the Protestant Religion every where—and I can assure your Lordships both for my selfe and the other Lords Commissioners for Scotland, that wee meet your Lordships with great regard and honour to your persons and with sincere intentions to advance this great design, and to accommodate any difficulties that may arise in the Treaty upon fair and reasonable termes.

Ordered that copies of the two Commissions be prepared, and signed by the respective Secretaries, to be interchanged at next Meeting.

Adjourned to Munday next, 16th instant.

[No. 3.]

The Speech of James Earl of Seafield, &c. Lord High Chancellor to the Parliament of Scotland, on Tuesday the third of July, 1705 :

MY LORDS AND GENTLEMEN—

Her Majesty in Her Most Gracious Letter, and my Lord Commissioner His Grace in His Speech, do propose these things to your consideration, which are of the greatest importance for the security of your Religion and Liberties: And Her Majesty is most willing to do all that is in Her power to promote the happiness and prosperity of all Her subjects.

For these ends, Her Majesty doth with great earnestness continue to recommend to you the settlement of the succession to the Crown in the Protestant line, as the surest measure for preserving all that is valuable to you, with regard either to your sacred or civil concerns: So long as this is delayed, the enemies of our present Establishment will continue their bad designs, and be ready to take the first opportunity to disturb the public peace. And when can you enter upon the deliberation of this matter with greater advantage than now, in Her Majesty's own time, and when you have assurances from Her of all encouragement, and that she is ready to grant such limitations and conditions of Government, with regard to the successor, as can be reasonably proposed, and will give Her Royal concurrence in every thing that can make this settlement advantageous to this nation.

Her Majesty doth also in Her Royal Letter, with great concern signify Her desire to prevent all differences that may happen between this Kingdom and that of England, and proposes the only expedient in this matter, the setting on foot a Treaty of Union, and of such other matters and concerns as may be for Her Majesty's Honor, and the good and advantage of both Kingdoms.

It is unquestionably the interest of both nations that they were more closely united, and that there were an entire communication of advantages and privileges, and that they both had the same interest, which would make this Island secure at home and formidable abroad. And you are assured of Her Majesty's Royal concurrence and assistance to make this Treaty effectual to the mutual advantage of both Kingdoms.

You will certainly think it reasonable to grant the needful supplies for maintaining the forces and the frigates, and for the other uses mentioned in Her Majesty's Letter—these being so necessary now in the time of war, for the support of Her Majesty's Government, and for the defence of this nation, against the attempts and designs of our enemies.

[No. 4.]

Extracts from the Articles of Union between England and Scotland.

ARTICLE 4.—That all the subjects of the United Kingdom of Great Britain shall, from and after the Union, have full Freedom and Intercourse of Trade and Navigation to and from any Port or place within the said United Kingdom, and the Dominions and Plantations thereunto belonging; and that there be a communication of all other Rights, Privileges, and Advantages, which do or may belong to the subjects of either Kingdom; except where it is otherwise expressly agreed in these Articles.

ARTICLE 25.—That all laws and Statutes in either Kingdom, so far as they are contrary to, or inconsistent with the terms of these Articles, or any of them, shall, from and after the Union, cease and become void, and shall be so declared to be, by the respective Parliaments of the said Kingdoms.

[No. 5.]

Extracts from the Scots and English Acts of Union :

Our Sovereign Lady and the Estates of Parliament, considering that by the late Act of Parliament, for a Treaty with England for an Union of both Kingdoms, it is provided—That the Commissioners for that Treaty should not treat of or concerning any alteration of the worship, discipline and government of the Church of this Kingdom as now by law established : which Treaty being now reported to the Parliament, and it being reasonable and necessary that the true Protestant Religion, as presently professed within this Kingdom, with the worship, discipline, and government of this Church, should be effectually and unalterably secured ; therefore, Her Majesty, with advice and consent of the said Estates of Parliament, doth hereby establish and confirm the said true Protestant Religion, and the worship, discipline, and government of this Church, to continue without any alteration to the people of this land in all succeeding generations.

And further, Her Majesty, with advice aforesaid, expressly declares, and statutes, that none of the subjects of this Kingdom, shall be liable to, but all and every one of them for ever free of any oath, test or subscription within this Kingdom, contrary to, or inconsistent with the foresaid true Protestant Religion, and Presbyterian Church government, worship, and discipline as above established ; and that the same within the bounds of this Church and Kingdom, shall never be imposed upon, or required of them in any sort. And lastly, that after the decease of Her present Majesty, (whom God long preserve) the Sovereign succeeding to Her in the Royal Government of the Kingdom of Great Britain, shall in all time coming at his or her accession to the Crown, swear and subscribe, that they shall inviolably maintain and preserve the foresaid settlement of the true Protestant Religion, with the government, worship, discipline, right and privileges of this Church, as above established by the laws of this Kingdom in prosecution of the claim of right.

Declaring, nevertheless, that the Parliament of England may provide for the security of the Church of England as they think expedient, to take place within the bounds of the said Kingdom of England, and not derogating from the security above provided for establishing of the Church of Scotland within the bounds of this Kingdom ; as also the said Parliament of England may extend the additions and other provisions contained in the Articles of Union, as above insert, in favours of the subjects of Scotland, to and in favours of the subjects of England ; which shall not suspend or derogate from the force and effect of this present ratification, but shall be understood as herein included, without the necessity of any new ratification in the Parliament of Scotland.

And lastly, Her Majesty enacts and declares, that all Laws and Statutes in this Kingdom, so far as they are contrary to, or inconsistent with the terms of these Articles, as above-mentioned, shall from and after the Union, cease and become void.

And be it further enacted by the authority aforesaid—That after the demise of Her Majesty, (whom God long preserve) the Sovereign next succeeding to Her Majesty in the Royal Government of the Kingdom of Great Britain, and so for ever hereafter, every King or Queen succeeding and coming to the Royal Government of the Kingdom of Great Britain, at his or her Coronation, shall in the presence of all persons who shall be attending, assisting, or otherwise then and there present, take and subscribe an oath to maintain and preserve inviolably the said settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established within the Kingdoms of England and Ireland, the Dominion of Wales, and Town of Berwick upon Tweed, and the Territories thereunto belonging.

And it is hereby further enacted by the authority aforesaid—That the said Act passed in this present Session of Parliament, intituled, An Act for securing the Church of England as by law established, and all and every the matters and things therein contained, and also the said Act of Parliament of Scotland, intituled, An Act for securing the Protestant Religion, and Presbyterian Church government, with the Establishment in the said Act contained, be and shall for ever be held and adjudged to be, and observed as fundamental and essential conditions of the said Union; and shall in all times coming be taken to be, and are hereby declared to be essential and fundamental parts of the said Articles and Union; and the said Articles of Union so as aforesaid ratified, approved and confirmed by Act of Parliament of Scotland, and by this present Act, and the said Act passed in this present Session of Parliament, intituled, An Act for securing the Church of England as by law established, and also the said Act passed in the Parliament of Scotland, intituled, An Act for securing the Protestant Religion, and Presbyterian Church government, are hereby enacted and ordained to be and continue in all times coming the compleat and entire Union of the two Kingdoms of England and Scotland.

[No. 6.]

Speech of Queen Anne, to the first British Parliament :

On the 6th November, 1707, Queen Anne, being seated on the Throne, was pleased to say :

MY LORDS AND GENTLEMEN—

It is with humble thankfulness to Almighty God, and with entire satisfaction to myself, that I meet you here, in this First Parliament of *Great Britain*—not doubting, but you come with hearts prepared, as mine is, to make this Union so prosperous, as may answer the well-grounded hopes of all my good subjects, and the reasonable apprehensions of our enemies.

* * * * *

On my part, nothing shall be wanting to procure to my People, all the blessings which can follow from this happy circumstance of my Reign; and, to extinguish, by all proper means, the least occasions of jealousy, that either the Civil or Religious Rights of any part of this my United Kingdom can suffer by the consequences of this Union.

[No. 7.]

Extract from Mr. Secretary Macaulay's Letter, to the Rev'd Alex'r Gale,
Moderator of the Synod of Canada :

SIR—

GOVERNMENT HOUSE, }
Toronto, 2d July, 1838. }

I have had the honor to receive your letter of the 22d June, which I have laid before the Lieut. Governor, together with your former letter addressed to Mr. Joseph, in which you state, that the Commission of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, have appointed certain of their members a deputation to wait upon the Lieutenant Governor, for the purpose of requesting such information as it might be in His Excellency's power to give respecting the intention of the Colonial Government of giving effect to the admissions which you state have been so long and so frequently made by the Ministers of the Crown in regard to the rights of the Church of Scotland in this Colony.

A copy of the Archdeacon's Report, which the Lieut. Governor believes has already been published, will be transmitted to you in a few days. A copy of Lord Glenelg's Despatch with its enclosures being the opinion of the Law Officers which was read at the interview on the 11th inst. I have now the honor to enclose ; and with reference to several remarks made thereupon by the deputation, I am directed to make the following observations :

1. The Deputation expressed themselves not to be convinced of the soundness of the opinion of the Law Officers, in favor of the legality of the endowments.

In furtherance of the kind disposition manifested by the Secretary of State, that if you should still feel it right to insist upon the further investigation of this question of law, and should be able to state any material facts, or to suggest any important argument which might have hitherto escaped notice, and would bring the same forward by petition, the Lieut. Governor will transmit the same to the Secretary of State, or, as His Excellency understood your desire was to have a judicial determination of the matter. He sees no legal objection to your instituting a proceeding in the Court of Chancery for the repeal of the patent of the endowment, or in any manner which you may be advised to adopt in any Court in the Province, in which the question can be legally entertained, from the decision of which Court an appeal can be had to the Judicial Committee of Her Majesty's Privy Council, to which allusion is made in the Despatch of the Secretary of State for the Colonies, of the ninth day of February, 1833.—(No. 20.)

If the opinion of the Law Officers had been against the legality of the endowment, His Excellency would probably have directed such a proceeding at the suit of the Crown. But Her Majesty's Government now conceiving the act legal, the burden of instituting the suit is unavoidably cast on those who wish to avoid the Patents.

[No. 3.]

Notice of the Constitution of Lower Canada Clergy Corporation, copied from the Quebec Gazette : [*Vide* Letter, p. 6.]

CLERGY RESERVES.

His Majesty having been graciously pleased to erect and constitute a Corporation, consisting of the Bishop of this Diocese and the Clergy of the Church

of England holding Benefices within this Province, for the superintending, managing and conducting the Reserves made or to be made for the support of a Protestant Clergy within the Province, Public Notice is hereby given, that all Leases of such Reserves will in future be granted by the said Corporation—and that applications for the same are to be made either to the Secretary of the Corporation at Quebec, or to the Clergyman of the Church of England residing nearest to the lot to be applied for:—

Notice is also further given to those persons—whether holding Clergy Reserves under Lease or occupying them without title, who are in arrear in the payment of rent for the lots respectively held by them, that the Ministers of the Church of England residing nearest to such lots are severally authorized on the part of the Corporation to receive arrears of Rent, or in cases where such arrears shall be large, to compound for them: such composition to be subject to the approbation of the Principal and Directors of the Corporation:—

And all persons, so in arrear, are called upon to make payment forthwith accordingly, and to prevent, thereby, the necessity of further proceedings against them.

By order of the Corporation,
Quebec, 13th June, 1820.

ANDREW WM. COCHRAN,
Sec'y.

[No. 9.]

Extracts from the Report of the Select Committee of the Legislative Council of Upper Canada, on the state of the Province, in 1833, adopted by the Council:

Your Committee have been led to discuss so much at large those subjects which engross attention at the present moment, that they can scarcely do more than allude to some other matters, which are too important, nevertheless, to be wholly omitted, in a review of the political state of this Province.

It is in their opinion exceedingly to be regretted, that the questions which have been agitated respecting the Clergy Reserves are still open, and apparently with as little prospect of a final settlement as at any former period.

It is most earnestly to be desired, that the discussions and expectations upon this subject should be brought speedily to a close by some final measure, for it is painful to observe their tendency to produce bitterness of feeling among the different religious denominations, and to place in unfriendly opposition to each other, men who would be otherwise united in maintaining a just respect for our Government and laws.

[No. 10.]

Resolutions proposed in the Assembly of Upper Canada, in 1823, by
Mr. Morris:

Resolved—That when the Kingdoms of England and Scotland were united, the Subjects of both were placed upon a footing of reciprocity, and were to enjoy a full communication of every right, privilege, and advantage, and that

neither the Church of the one nor the other thereby gained any ascendancy—on the contrary, that both were established by law as National Protestant Churches within their respective Kingdoms, and consequently the Clergy of both are equally entitled to a participation in all the advantages which have resulted, or may hereafter result from the said Union.

Resolved—That the Provinces of Canada were wrested from the Dominions of France, by the United exertions of Great Britain and Ireland, and that the Churches of England and Scotland had at the conquest thereof, an equal claim to enjoy the advantages which might be derived from the said conquest.

Resolved—That by the Act of the British Parliament, passed in the 31st year of His late Majesty's Reign, the Governor, Lieutenant Governor, or person Administering the Government of this Province, was authorised to set apart a portion of one-seventh of the Lands for the support and maintenance of a Protestant Clergy.

Resolved—That if His late Majesty, when he graciously authorised an appropriation of Land for the support and maintenance of a Protestant Clergy in this Province, did not contemplate a provision for the Clergy of the Church of Scotland, that they ought now to come under His Majesty's most favorable consideration, by being otherwise provided for.

Resolved—That an humble Address be presented to His Majesty, founded on the foregoing Resolutions, praying that His Majesty will be graciously pleased to direct such measures as will secure to the Clergy of the Church of Scotland, residing, or who may hereafter reside in this Province, such support and maintenance as His Majesty shall think proper.

[No. 11.]

Minute in Council authorising the establishment of Rectories in Upper Canada, with extract from the confidential Despatch, upon which the Council acted, as communicated by His Excellency Sir George Arthur, to the Assembly of Upper Canada :

(Copy.)

EXECUTIVE COUNCIL CHAMBER,
Toronto, Friday, 15th January, 1836. }

Present—The Honorable Peter Robinson, Presiding Councillor, George H. Markland, Joseph Wells.

To His Excellency Sir John Colborne, K. C. B. Lieutenant Governor of the Province of Upper Canada, and Major General Commanding His Majesty's Forces therein. &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY—

Pursuant to the views of Lord Goderich, shewn by his Despatch of the 5th April, 1832, in which he concurs with Your Excellency, and expresses his desire "that a moderate portion of Land should be assigned in each Township or Parish for insuring the future comfort, if not the complete maintenance of the Rectors," the Council caused the necessary steps to be taken, for the purpose of setting apart lots in each Township throughout the Province.

Much delay has been caused by their anxiety to avoid interfering with persons who might have acknowledged claims to any of the Reserves to be selected, either for lease or purchase.

A difficulty in completing what His Lordship most appropriately calls "this salutary work," was, also, caused by the Crown Officers not concurring in the form to be used in the Instrument by which the endowment is to be confirmed, which left the Council to decide as to the mode to be adopted for that purpose.

These obstacles have now been surmounted, and it is respectfully recommended that no time be lost in authorizing the Attorney General to prepare the necessary instruments to secure to the incumbents named in the annexed Schedules, and their successors, the lots of land there enumerated as having been respectively set apart for glebes.

All which is respectfully submitted.

(Signed)

PETER ROBINSON, P. C.

(Signed,)

J. C.

(Copy)

Extract from Lord Goderich's confidential Despatch to Lieut. Governor

Sir John Colborne, dated Downing-street, 5th April, 1832.

"And I am happy to find that your practical views, founded upon personal knowledge and experience, are so coincident with those which, upon a more speculative view I had been led to entertain. I quite concur with you in thinking that the greatest benefit to the Church of England would be derived from applying a portion at least of the funds under the control of the Executive Government, in the building of Rectories and Churches; and I would add, in preparing, as far as may be, for profitable occupation, that moderate portion of land which you propose to assign in each Township or Parish for ensuring the future comfort, if not the complete maintenance of the Rectors. With this view it appears so me that it would be most desirable to make a beginning in this salutary work."

[No. 12.]

Case submitted by Lord Glenelg, to the Law Officers of the Crown in England, for their opinion as to the validity of the Rectories:

(Copy)

Immediate.

DOWNING-STREET,

12th April, 1836. }

SIR—The Statute 31st Geo. III, cap. 31, sec. 33, enables His Majesty to authorise the respective Governors of Lower Canada and of Upper Canada, with the advice of the Executive Council, to constitute within each Township or Parish a Parsonage or Rectory according to the establishment of the Church of England, and to endow every such Parsonage or Rectory with so much of the Clergy Reserves as the Governor, with the advice of the Council, shall judge to be expedient under the then existing circumstances of such Township or Parish.

The Governor's Commission, dated 6th July, 1835, following in this respect the ancient and established form, authorises the Governor, or in his absence the Lieut. Governor, with the advice of the Executive Council, to erect Parsonages in each Township or Parish according to the establishment of the Church of England, and to endow any such Parsonage or Rectory with any part of the Clergy Reserves, "subject, nevertheless," (to quote the precise words of the Commission) "to such instructions touching the premises as shall or may be given you by us under our signet and sign manuel, or by our order in our Privy Council, or through one of our Principal Secretaries of State."

Thus the authority which His Majesty was enabled by Parliament to impart to the Governor was, in fact, so imparted to him subject to the King's further instructions.

From the date of the Statute 31st Geo. III. until the year 1835, the power of constituting and erecting Parsonages or Rectories, was never exercised in Upper Canada. But at the close of that year it was called into exercise by the then Lieut. Governor Sir John Colborne. The intention to adopt this measure was not communicated by Sir John Colborne to His Majesty's Government, nor was the measure itself ever reported by that Officer, having been taken immediately before his resignation of the Government into the hands of his successor Sir Francis Bond Head. The total number of Rectories thus established appears to have been fifty-seven.

Having recently received from Sir Francis Head a Report on the subject, enclosing the Minutes of the Executive Council of Upper Canada, of 15th Jan. 1836, I enclose a copy of those Minutes. You will perceive from them that the Council founded their recommendation of this measure on a Despatch from Lord Goderich, of 5th April, 1832, from which they quote one passage.—That passage, however, is not accurately described. Lord Goderich is represented in the Minutes as expressing his desire "that a moderate portion of land should be assigned in each Township or Parish, for ensuring the future comfort, if not the complete maintenance of the Rectors." On referring to the Despatch itself, it appears that it expressed His Lordship's opinion that the greatest benefit to the Church of England would be derived from applying a portion at least of the Funds under the control of the Executive Government, "in preparing as far as may be practicable for profitable occupation that moderate portion of land which you (Sir John Colborne) propose to assign in each Parish for increasing the future comfort, if not the complete maintenance of the Rectors."

The distinction between the Earl of Ripon's language and the terms in which it is thus quoted, is important. It conveys no signification of His Majesty's pleasure, nor indeed any instruction, respecting the erection of Parsonages and Rectories, nor even with regard to the grant of land for the maintenance of the Clergy. The main subject of the passage is the application of certain funds in preparing for profitable occupation certain lands, and those lands are indicated merely by a passing reference to some intention entertained and announced by Sir John Colborne. The records of this Office contain no Despatch from Sir John Colborne, in which any allusion is made to the subject.—It may therefore be inferred that Sir John Colborne's intentions were made known to Lord Ripon through some private and unofficial channel.

The Council, however, appear to have understood Lord Ripon's expressions, as such an intimation of the King's pleasure as would justify the erection and endowment of fifty-seven Rectories. That the words were not designed by His Lordship to be so understood, may with some confidence be inferred from the following circumstance. The Statute 31st Geo. III. sec. 36 to 40 enables

the Provincial Legislature on certain conditions to repeal so much of that Act as relates to the Clergy Reserves. On the 21st Nov. 1831, that is six months before the date of the Despatch to which reference is made by the Executive Council, Lord Ripon addressed to Sir John Colborne a Despatch in which the Provincial Legislature were invited to exercise this power, and he expressly recommended that the repeal should embrace all the clauses in question, amongst which are included those which relate to the erection and endowment of Rectories. The Despatch of 5th April, 1832, was marked "confidential," and it would seem impossible that Lord Ripon could have designed by such a communication to convey to the Lieut. Governor the King's sanction for neutralizing to a considerable extent the effect of that repeal which, five months before, His Lordship had recommended in a public Despatch.

I enclose for your perusal copies of the two Despatches of 21st November, 1831, and of the 5th April, 1832.

The questions which I would propose for your consideration are the following:—

First—Adverting to the terms of the Statute 31 Geo. III. cap. 31, sec. 36 to 40, and to the terms of the Royal Commission, could the Lieut. Governor, with the advice of the Executive Council, lawfully constitute, and erect or endow any Parsonage or Rectory within the Province, without the further signification of His Majesty's pleasure?

Secondly—Can Lord Ripon's Despatch of 5th April, 1832, be regarded as signifying His Majesty's pleasure for the erection of Parsonages, or for the endowment of them, or for either of those purposes?

Thirdly—Are the erection and the endowment of the fifty-seven Rectories, by Sir John Colborne, valid and lawful acts?

Fourthly—If the preceding questions be answered in the affirmative, have the Rectors of Parishes so erected and endowed, the same ecclesiastical authority within their respective limits as are vested in the Rector of a Parish in England, or within what other bounds is that authority restricted?

You will have the goodness to consider these questions in consultation with the King's Advocate and Mr. Solicitor General, and report to me your and their joint opinion upon them,

(Signed)

GLENELG.

[No. 13.]

Opinion delivered on the above case, dated Doctors' Commons, 8th June, 1837.

In obedience to your Lordship's commands, we have considered the several questions, and have the honor to report, that adverting to the terms of the Statute 31st Geo. III. cap. 31, sec. 36 to 40, and to the terms of the Royal Commission, we are of opinion, that the Lieut. Governor, with the advice of the Executive Council, could not lawfully constitute and erect or endow any Parsonage or Rectory within the Province, without the further signification of His Majesty's pleasure.

Secondly—We are of opinion that Lord Ripon's Despatch of the 5th of April, 1832, cannot be regarded as signifying His Majesty's pleasure for the

erection of Parsonages, or for the endowment of them, or for either of those purposes.

Thirdly—We are of opinion, that the erection and the endowment of the fifty-seven Rectories. by Sir John Colborne, are not valid and lawful acts.

We have, &c.

(Signed)

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J. DODGSON,
J. CAMPBELL,
R. M. ROLFE.

[No. 14.]

Extract from the Royal Instructions, to the Governors of Canada :

47. You shall recommend to the Legislative Council and General Assembly of the Province of Upper Canada, to settle the limits of Parishes in such manner as may be deemed most convenient.

52. You are not to present any Protestant Minister to any Ecclesiastical Benfice within our said Province, by virtue of the said Act, passed in the thirty-first year of our Reign, and of our Commission to you, without a proper certificate from the Bishop of Quebec, or his Commissary, of his being conformable to the doctrine and discipline of the Church of England.

[No. 15.]

Second opinion given by the Law Officers of the Crown, on the subject of Rectories, wherein they affirm the *validity* of the Endowments in point of law, but maintain the *insufficiency of the authority to which alone the order in Council referred, as the foundation of the measure* :

DOCTORS' COMMONS, 24th January, 1838.

My Lord—We are honored with your Lordship's commands, signified in your letter of the 19th ult. transmitting several documents which were referred to us on the 12th April last, on the subject of endowment of certain Rectories in the Province of Upper Canada ; also enclosing a copy of the Report made by us in answer to that reference with copies of a correspondence which has since taken place on this subject, between your Lordship and the Lieutenant Governor of Upper Canada, also enclosing a copy of the Commission under which the Government of the Province was administered in the month of January, 1836, when the Order of the Lieut. Governor in Council respecting those Rectories was made.

Adverting to these various documents, and especially to the Report of the Archdeacon of Toronto, accompanying Sir F. B. Head's Despatch of the 18th of October, your Lordship is pleased to request that we should report our joint opinion, whether the addition of the *material fact* now communicated to us af

fects the conclusion which we adopted and reported to your lordship on the 8th of June, and if so, that we would report the answer which we would now give to the questions proposed in your Lordship's letter of the 12th of April, viz :—

First—Adverting to the terms of the Statute 31st Geo. III. cap. 31, sec. 36 and 40, and to the terms of the Royal Commission, could the Lieutenant Governor, with the advice of the Executive Council, lawfully constitute and erect or endow any Parsonage or Rectory within the Province, without the further signification of His Majesty's pleasure.

Secondly—Can Lord Ripon's Despatch of the 3d of April, 1832, be regarded as signifying His Majesty's pleasure for the erection of Parsonages, or for the endowment of them, or for either of these purposes.

Thirdly—Are the erection and the endowment of the fifty-seven Rectories, by Sir John Colborne, valid and lawful acts.

Fourthly—If the preceding questions be answered in the affirmative, have the Rectors of the Parishes so erected and endowed, the same Ecclesiastical authority within their respective limits, as are vested in the Rector of a Parish in England, or within what other bounds is that authority restricted.

In obedience to Your Lordship's commands, we have the honor to report, that adverting to the various documents, and especially to the instructions contained in Lord Bathurst's Despatch to Sir P. Maitland, of the 22d of July, 1825, referred to in the Report of the Archdeacon of York, (Toronto) and also to the terms of the Royal Commission, the whole of which is now before us, we are of opinion : 1.—That the Lieutenant Governor, with the advice of the Executive Council, could lawfully constitute and erect or endow any Parsonage or Rectory within the Province, without the further signification of His Majesty's pleasure. 2.—We are of opinion that Lord Ripon's Despatch of the 5th April, 1832, cannot be regarded as signifying His Majesty's pleasure for the erection of Parsonages, or for the endowment of them, or for either of those purposes. 3.—We are of opinion that the erection or endowment of the fifty-seven Rectories, by Sir John Colborne, are valid and lawful acts. We are of opinion that the Rectors of the Parishes so erected and endowed, have the same Ecclesiastical authority within their respective limits, as are vested in the Rector of a Parish in England. We have the honor to be, &c.

(Signed)

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J. DODGSON,
J. CAMPBELL,
R. M. ROLFE:

To the Right Hon. Lord Glenelg, &c. &c. &c.

[No. 16.]

Petition of the Clergy of the Church of England.

To the Honorable the Commons House of Assembly, in Provincial Parliament Assembled :

The Petition of the Clergy of the Established Church Assembled under the authority of the Lord Bishop of the Diocese—

MOST HUMBLY SHEWETH—

That by the Act of the 31st Geo. III. chap. 31, one-seventh of the lands of this Province has been set apart for the support of a Protestant Clergy

therein :—That your Petitioners, after a careful and patient investigation of all the arguments which have been advanced on the subject of this Reservation, continue not only unchanged, but more confirmed, in the opinion that the Clergy Reserves were, by that Act, designed solely and exclusively for the Church of England—

That Your Petitioners, from a careful examination of that Act, and of every authority which can be brought to illustrate it, can arrive at no other conviction than that the power delegated therein to the Provincial Legislature, “ To vary or Repeal ” its provisions, has no application to the Reservations of Land which have already been made, but can be construed merely into a permission to vary the amount of appropriation, or regulate it for the future—

That, whereas, doubts have been raised as to the legality of the exclusive claim of Your Petitioners to the Clergy Reserves, they have uniformly expressed a willingness to submit the question to a Judicial Tribunal, competent to pronounce a decision, and respectfully to yield to the judgment which, in such case, should be awarded—That against any proposal for the settlement of this question, which should go to alienate the Clergy Reserves from the original object of their appropriation, the religious instruction of the people of this Province, Your Petitioners feel bound, by a most solemn sense of duty, to record their decided protest—

That with a view to the settlement of this question, any plan for the division of this property, amongst various sects and denominations, which would directly compromise the principles as well as interests of the Established Church, endanger the cause of Protestantism, and lead to a religious discord, which must prove the fruitful and permanent source of civil dissension, Your Petitioners are constrained from an equal sense of duty to oppose—

That Your Petitioners feel bound to express it as their decided conviction, that the agitation which has ensued from the discussion of this question, and the excitement of which it has been rendered the instrument, are not to be ascribed to the simple merits of the question itself, but to the misrepresentation and abuse of the public mind, which, in many cases, for interested and unhallowed purposes, have industriously been made—

That although, in the opinion of Your Petitioners, the operation of the Act for the appropriation of the Clergy Reserves, as understood by themselves, could not possibly prove a grievance, but a blessing of the highest order to the community, they do not view without pain and anxiety the political disquiet and religious animosity to which the agitation of this question has unhappily given rise, and that they are most desirous of its adjustment, upon some basis which may secure the peace as well as promote the religious interests of the country—

That from the influence of conflicting prejudices and interests, Your Petitioners are firmly of opinion that an impartial, equitable, and satisfactory adjustment of the question of the Clergy Reserves, cannot be expected from the Provincial Legislature—

That Your Petitioners not deeming themselves competent to make any concession which may compromise, or appear to compromise, in any degree, the interest of the Church and their successors in the Ministry, earnestly pray, for the sake of peace, a judicial decision of the question before a competent tribunal, either the Judges of England or the Judicial Branch of Her Majesty's Most Honorable Privy Council, or should this their honest prayer be found, after every effort unavailing, that then an Act be passed by the Provincial Legislature, re-investing the Clergy Reserves in the Queen, in Parliament, to be appropriated for the support of a Protestant Clergy, according to the spirit and intention of the Constitutional Act. Your Petitioners, therefore, most earnestly entreat

Your Honorable House to use Your influence to procure such a legal decision—
And Your Petitioners, as in duty bound, will ever pray. In the name and on
behalf of the Clergy of Upper Canada.

G. MONTREAL,
GEO. OKILL STUART, L. L. D.
Archdeacon of Kingston.
JOHN STRACHAN, D. D. L. L. D.
Archdeacon of York.

Toronto, 11th October, 1833.

[No. 17.]

Letter from Mr. Macaulay, Civil Secretary, communicating the Reply of
Her Majesty's Government, to a Memorial from the Clergy of the Church
of England, in Canada, adopted at the same time, and in the same
terms, as the above Petition to the Assembly:

GOVERNMENT HOUSE, Toronto, 25th Feb. 1839.

Sir—I am commanded by the Lieut. Governor to inform you, that His Excellency having duly transmitted to the Secretary of State for the Colonies the Address from the Bishop of Montreal, and Clergy of the Church of England in Upper Canada, praying for a Judicial decision respecting the Clergy Reserves, either before the Judges of England, or before the Judicial Committee of Her Majesty's Privy Council, His Excellency has received a Despatch, dated 15th ult. stating that as Her Majesty's Government see no reason to doubt the correctness of the opinion delivered on this subject in 1819 by the Law Officers of the Crown, they do not consider it necessary to originate any proceedings on the subject before the Judges of England, or the Privy Council. I have the honor to be, Sir, your most ob't serv't,

JNO. MACAULAY.

The Hon. and Ven. the Archdeacon of York.

[No. 18. *Vide* Letter, p. 25.]

Report on School Lands.

The Committee appointed to consider and report on the Documents sent down to this House by His Excellency the Lieut. Governor, on the subject of School Lands, respectfully beg leave to make this their first Report:

Your Committee, upon a perusal of these important papers, learn that in the year 1797 the Legislative Council and House of Assembly of this Province passed a joint Address to His Majesty " imploring that His Majesty would be graciously pleased to direct the appropriation of a certain quantity of the waste lands of the Crown as a fund for the establishment and support of a respectable

Grammar School in each District thereof, and also of a College or University for the instruction of youth in the different branches of liberal knowledge." To which His Majesty was graciously pleased to express his intention "to comply with the wishes of the Legislature of his Province of Upper Canada in such manner as should be judged to be the most effectual—First, by the establishment of Free Grammar Schools in those Districts, in which they are called for, and in due process of time, by establishing other seminaries of a larger and more comprehensive nature for the promotion of religious and moral learning, and the study of the Arts and Sciences." For which purpose, Mr. President Russell was directed "to consult the members of the Executive Council and the Judges and Law Officers of the Crown and to report in what manner and to what extent a portion of the Crown Lands might be appropriated and rendered productive towards the formation of a fund for these purposes, out of which His Majesty might allot such salaries as he should judge proper for the school masters of such Free Schools as should thereafter be appointed. And on the 1st Dec'r, 1798, the Executive Council reported to Mr. President Russell—"That an appropriation of 500,000 acres, or ten townships, after deducting the Crown and Clergy sevenths, would be a sufficient fund for the establishment and maintenance of the Royal Foundation of four Grammar Schools, and an University in the Province of Upper Canada," and that the proposed School Fund should, when raised, be applied: 1. For the erection of the necessary buildings.—2. For the payment of the salaries of the masters. 3. For keeping the buildings in repair and the purchase of books and philosophical apparatus, and that £3,000 currency be applied to erect each building, and £180 per annum for the establishment and support of a Free Grammar School in each District.

The Council also reported that the Towns of Cornwall, Kingston, Newark, and Sandwich, were at that time the most proper places for the sites of four schools, first necessary, and that the Town of York was the most suitable for a University, and that two of the schools, namely, at Kingston and Newark, should be commenced first, and that whenever the appropriated fund should be found sufficient, not only to bear the expense of the erection and endowment of those two schools, but also to leave a residue sufficient for the establishment and future maintenance of a seminary of a larger and more comprehensive nature, that steps should be taken to endow the two other schools. The Executive Council also recommended that the provision for the establishment and maintenance of the University, should at least be equal to that for the four schools taken together.

Your Committee, upon looking over the remaining Documents which His Excellency had the goodness to communicate to this House, are informed that the attention of the Council was again directed to the School Land Reservation, on the 7th January, 1819, and that they reported to His Excellency, Sir P. Maitland, that no trace of any answer to the report of the Council of 1st Dec'r, 1798, could be found in the Council Office; that as they were of opinion with the Attorney General that the appropriation of land was not sufficiently sanctioned to authorise a grant in other portions than limited by His Majesty's Commission, they thought it proper to recommend that His Excellency should call the attention of His Majesty's Government to a formal sanction to sell, lease, grant and dispose of the said 500,000 acres of land for the purpose of establishing a University in this Province, endowed by Royal Charter, as provision for District Schools was not, by them, thought necessary out of this fund, as it had been already made by the Legislature, and that in order to construct the necessary building the sum of £10,000 would be required, with an endowment of £4,000 per annum, for the payment of salaries.

From this condensed view of the proceedings of the Executive Council on the munificent provision for the diffusion of education in this Province, the Com-

mittee are struck with the singular fact that no apparent benefit has resulted to the inhabitants of the country from the school reservation for a period of thirty years, and that the original intention of the Legislature expressed in the Joint Address to His Majesty, as well as His Majesty's most gracious desire to meet their wishes by the establishment of free Grammar Schools in those Districts in which they are called for, and in due process of time to establish other seminaries of a more extensive nature; have hitherto, as far as your committee can judge, been lost sight of, and for no other reason that your committee can discover, than that a school has by an act of the Legislature been already established in each District with a salary of £100 to the master. But this very limited provision, your committee respectfully submit ought not to deprive the people of their just claim to a participation in the benefits of the school lands, and to that end the committee suggest that the Legislature ought now to address His Majesty setting forth the great value of these lands and the ample means which they afford to carry into effect the benevolent intentions of his late Royal Father, by an endowment from their proceeds, for each District, of at least £400, which added to the present appropriation would support eleven respectable seminaries where the youth of the Province generally might receive a liberal education without being removed many hundred miles from the tender care and watchful authority of their Parents, as must be the case if these lands are exclusively applied to establish and support King's College, or any other extensive university which can only be viewed as of benefit to those whose wealth enables them to bear the great expense of sending their children to the capital of the Province—Your Committee also recommend, that besides the above endowment, the sum of £2,000 might be set apart for the annual support of a Provincial Seminary at York, whether called Upper Canada College, or by any other name, and that a suitable sum should be expended to erect the necessary buildings, and also to defray the expense of buildings for the Free Grammar Schools.

That besides these endowments, your committee are of opinion, that the great value and extent of the reservation will afford the means of providing a salary of £50 each to the teachers, of at least twelve township schools, in each District, and thus give to Upper Canada a system of Education that might well be envied by any other Colony in His Majesty's dominions.

The data upon which Your Committee have made the foregoing suggestions are the following, viz: That the whole reservation of 549,217 acres, if sold, at the average price of 10s. per acre, would give a capital of £274,608, producing, if invested at the rate of five per cent interest, an annual income of £13,730, a sum sufficient to endow the schools, which your committee conceive to be necessary, besides leaving an important balance to defray the expense of the sales and collecting the money:

Eleven Grammar Schools at £400, is	-	-	£4,400	0	0
1 College at York,	-	-	2,000	0	0
132 Town'p Schools, being 12 in each District, £50 each	-	-	6,600	0	0
Balance,	-	-	730	0	0
			<hr/>		
			£13,730	0	0

Your Committee, in assuming that these lands will sell at the above rate, conceive that they have much underrated their actual value, as it is generally understood that the Council of King's College, have estimated 225,273 acres of Crown Reserves, which were exchanged for and now form a part of the School reservation as worth £1 per acre.

Your Committee, taking all the circumstances of this highly important subject into their most serious consideration, and averse to an extensive endow-

ment out of this fund to King's College, or any other University, until the original intention of founding a Free Grammar School in each District, has first been carried into effect, earnestly recommend to the House that an humble Address be forthwith transmitted to His Majesty representing the manifest injury that is inflicted on the Inhabitants of this Province by the endowment of the best half of the School Reservation for the establishment of a Seminary far exceeding the wants of the country, and solemnly beseeching His Majesty to listen to the anxious desire of His faithful subjects in Upper Canada, by arresting the Alienation of these lands from their original purpose, and placing them under the control of the Legislature—and for this object your committee submit the following Resolutions for the consideration of the House.

All which is respectfully submitted, W. MORRIS, Chairman.
Committee Room, House of Assembly, 23d Feb. 1831.

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